

WSR 14-05-009
PROPOSED RULES
SPOKANE REGIONAL
CLEAN AIR AGENCY
[Filed February 6, 2014, 1:33 p.m.]

Supplemental Notice to WSR 13-23-073.

Proposal is exempt under RCW 70.94.141(1).

Title of Rule and Other Identifying Information:
SRCAA Regulation I, Article IX - Asbestos Control Standards and SRCAA Regulation I, Article X, Section 10.09 – Asbestos Project and Demolition Notification Waiting Period and Fees.

Hearing Location(s): Spokane Regional Clean Air Agency (SRCAA), 3104 East Augusta Avenue, Spokane, WA 99207, on May 1, 2014, at 9:30 a.m.

Date of Intended Adoption: May 1, 2014.

Submit Written Comments to: Matt Holmquist, 3104 East Augusta Avenue, Spokane, WA 99207, e-mail mholmquist@spokanecleanair.org, fax (509) 477-6828, by February 6, 2014.

Assistance for Persons with Disabilities: Contact Barbara Nelson by April 18, 2014, (509) 477-4727 ext. 116.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Original proposal in WSR 13-23-073 revised to address written public comments and additional staff comments.

Summary of revisions are as follows:

- Exclude reference to "debris" in Section 9.02.Z.
- Exclude proposed asbestos survey exception for contractors in Section 9.03.F.6.
- Include example of mechanical methods in Section 9.06.B.
- Maintain notification requirement for project cancellation in 9.04.B.1.
- Strike reference to Sections 9.09-9.10 in 9.07.C since not applicable.
- Clarify in Section 10.09.A that refunds are available for overpayments.

Reasons Supporting Proposal: Same as above.

Statutory Authority for Adoption: RCW 70.94.141, 70.94.380(2).

Statute Being Implemented: Chapter 70.94 RCW and 42 U.S.C. 7401 et. seq., 42 U.S.C. 7412.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: SRCAA is responsible for implementing federal laws regarding the renovation and demolition of structures that may contain asbestos. Because there is no known safe level of exposure to asbestos and because each exposure to asbestos increases a person's risk of acquiring asbestos related diseases, SRCAA administers an asbestos program under Regulation I, Article IX and Section 10.09 as a reasonable approach to controlling asbestos emissions primarily resulting from asbestos projects, renovation projects, and demolition projects.

Name of Proponent: SRCAA, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Matt Holmquist, SRCAA,

3104 East Augusta Avenue, Spokane, WA 99207, (509) 477-4727.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This is a local clean air agency rule and as such, chapter 19.85 RCW does not apply.

A cost-benefit analysis is not required under RCW 34.05.328. This is a local agency rule and pursuant to RCW 70.94.141(1), RCW 34.05.328 does not apply to this rule.

February 6, 2014

Matt Holmquist
Compliance Administrator

AMENDATORY SECTION

The following article of SRCAA Regulation I is amended:

Article IX – Asbestos Control Standards

ARTICLE IX – ASBESTOS CONTROL STANDARDS

SECTION 9.01 PURPOSE

The Board of Directors of the Spokane Regional Clean Air Agency recognizes that airborne asbestos is a serious health hazard. Asbestos fibers released into the air can be inhaled and cause lung cancer, pleural mesothelioma, peritoneal mesothelioma or asbestosis. The Board of Directors has adopted this regulation to control asbestos emissions primarily resulting from asbestos projects, renovation projects, and demolition projects in order to protect the public health.

SECTION 9.02 DEFINITIONS

A. **AHERA Building Inspector** means a person who has successfully completed the training requirements for a building inspector established by United States Environmental Protection Agency (EPA) Asbestos Model Accreditation Plan: Interim Final Rule (40 CFR Part 763, Appendix C to Subpart E) and whose certification is current.

B. **AHERA Project Designer** means a person who has successfully completed the training requirements for an abatement project designer established by EPA Asbestos Model Accreditation Plan: Interim Final Rule (40 CFR Part 763, Appendix C to Subpart E) and whose certification is current.

C. **Asbestos** means the asbestosiform varieties of actinolite, amosite (cummingtonite-grunerite), tremolite, chrysotile (serpentinite), crocidolite (riebeckite), or anthophyllite.

D. **Asbestos-Containing Material (ACM)** means any material containing more than one percent (1%) asbestos as determined using the method specified in the EPA publication, *Method for the Determination of Asbestos in Building Materials*, EPA/600/R-93/116, July 1993 or a more effective method as approved or required by EPA. It includes all loose vermiculite (e.g., vermiculite attic insulation, vermiculite block fill) and any material presumed to be asbestos-containing.

E. **Asbestos-Containing Waste Material (ACWM)** means any waste that contains or is contaminated with asbestos-containing material ((, except for nonfriable asbestos-containing roofing that remains nonfriable)). Asbestos-con-

taining waste material includes asbestos-containing material that has been removed from a structure, disturbed, or deteriorated in a way that it is no longer an integral part of the structure or component, asbestos waste from control equipment, materials used to enclose the work area during an asbestos project, asbestos-containing material collected for disposal, asbestos-contaminated waste, debris, containers, bags, protective clothing, or high efficiency particulate air (HEPA) filters. Asbestos-containing waste material does not include samples of asbestos-containing material taken for testing or enforcement purposes.

F. Asbestos Project means any activity involving the abatement, renovation, demolition, removal, salvage, clean-up or disposal of asbestos-containing material, or any other action or inaction that disturbs or is likely to disturb any asbestos-containing material. It includes the removal and disposal of asbestos-containing material or asbestos-containing waste material. It does not include the application of duct tape, rewettable glass cloth, canvas, cement, paint, or other non-asbestos materials to seal or fill exposed areas where asbestos fibers may be released ((~~nor does it include nonfriable asbestos-containing roofing material that will not be rendered friable~~)).

G. Asbestos Survey means a written report resulting from a thorough inspection performed pursuant to Section 9.03 of this Regulation.

H. Asphalt Shingles means asphalt roofing in shingle form, composed of glass felt or felts impregnated and coated on both sides with asphalt, and surfaced on the weather side with mineral granules. Some asphalt shingle styles are commonly referred to as three-tab shingles.

I. Competent Person means a person who is capable of identifying asbestos hazards and selecting the appropriate asbestos control strategy, has the authority to take prompt corrective measures to eliminate the hazards, and has been trained and is currently certified in accordance with the standards established by the Washington State Department of Labor and Industries, the federal Occupational Safety & Health Administration, or the United States Environmental Protection Agency (whichever agency has jurisdiction).

J. Component means any equipment, pipe, structural member, or other item or material.

((I)) K. Contiguous means touching or adjoining.

((J. Component means any equipment, pipe, structural member, or other item or material.))

((K)) L. Controlled Area means an area to which only certified asbestos workers, representatives of the Agency, or other persons authorized by the Washington Industrial Safety and Health Act (WISHA), have access.

((L)) M. Demolition means wrecking, razing, leveling, dismantling, or burning of a structure, making the structure permanently uninhabitable or unusable in part or whole. It includes any related handling operations. ((Pursuant to the EPA asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP), 40 CFR Part 61, Subpart M, i)) It also includes moving a structure (except a mobile home which remains intact) and wrecking or taking out of any load-supporting structural member (except in an owner-occupied, single-family residence) ((of a facility together with any related handling operations and includes moving a facility)).

((M)) N. Disposal Container means a carton, bag, drum, box, or crate designed for the purpose of safely transporting and disposing of asbestos-containing waste material.

((N. Facility means an institutional, commercial, public, industrial or residential structure, installation or building (including any structure, installation or building containing condominiums, or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units); any ship; or any active or inactive waste disposal site. The term includes any structure, installation or building that was previously subject to the Asbestos NESHAP, regardless of its current function, apartments which are an integral part of a commercial facility, and mobile structures used for non-residential purposes. It also includes homes that are demolished or renovated to build non-residential structures (e.g., homes demolished for highway construction projects).))

O. Friable Asbestos-Containing Material means asbestos-containing material that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure or by the forces expected to act upon the material in the course of demolition, renovation, or disposal. Each of these descriptions is separate and distinct, meaning the term includes asbestos-containing material that, when dry, can be:

1. Crumbled by hand pressure or by the forces expected to act upon the material in the course of renovation, demolition, or disposal;

2. Pulverized by hand pressure or by the forces expected to act upon the material in the course of renovation, demolition, or disposal; or

3. Reduced to powder by hand pressure or by the forces expected to act upon the material in the course of renovation, demolition, or disposal).

Such materials include, but are not limited to, thermal system insulation, surfacing material, Nicolet roofing paper and similar asbestos papers, and cement asbestos products.

P. Homogeneous Area means an area of surfacing material, thermal system insulation material, or a miscellaneous material that is uniform in color or texture. Unless approved otherwise by SRCAA, rubble piles, debris piles, ash, soil, and similar materials are not homogeneous areas.

((P)) Q. Leak-Tight Container means a dust-tight and liquid tight disposal container, at least 6-mil thick, that encloses asbestos-containing waste material and prevents solids or liquids from escaping or spilling out. Such containers may include sealed plastic bags, metal or fiber drums, and sealed polyethylene plastic.

((Q)) R. Nonfriable Asbestos-Containing Material means asbestos-containing material that is not friable (e.g.((,))) when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure or by the forces expected to act on the material in the course of demolition, renovation, or disposal).

((R)) S. Nonfriable Asbestos-Containing Roofing means an asbestos-containing roofing material where all of the following apply:

1. The roofing is a nonfriable asbestos-containing material;

2. The roofing is in good condition and is not peeling, cracking, or crumbling;

3. The roofing binder is petroleum-based and asbestos fibers are suspended in that base with individual fibers still encapsulated; and

4. The roofing binder exhibits enough plasticity to prevent the release of asbestos fibers in the process of removing and disposing of it.

((S)) T. Owner-Occupied, Single-Family Residence means any non-multiple unit building containing space for uses such as living, sleeping, preparation of food, and eating that is used by one family who owns the property as their domicile (permanent and primary residence) both prior to and after renovation or demolition, and can demonstrate such to the Agency upon request (e.g.((i))) utility bills). This term includes houses, mobile homes, trailers, detached garages, outbuildings, houseboats, and houses with a "mother-in-law apartment" or "guest room". This term does not include rental property, multiple unit buildings (e.g.((j))) duplexes and condominiums with two or more units) or multiple-family units, nor does this term include any mixed-use building (e.g.((k))) a business being operated out of a residence), structure, or installation that contains a residential unit. This term does not include structures used for structural fire training exercises (Regulation I, Article VI, Section 6.01 and 40 CFR Part 61, Subpart M), structures previously subject to the federal asbestos NESHAP (40 CFR Part 61, Subpart M), structures that are part of a larger installation (e.g., military base, company housing, apartment complex, housing complex, institution, industrial operation, etc.), or government ordered demolitions.

((F)) U. Owner's Agent means any person who leases, operates, controls, or is responsible for an asbestos project, renovation, demolition, or property subject to Article IX of this Regulation. It also includes the person(s) submitting a notification pursuant to Section 9.04 of this Regulation and/or performing the asbestos survey.

((U)) V. Person means any individual, firm, public or private corporation, association, partnership, political subdivision, municipality, or government agency.

((V)) W. Renovation means altering a structure or component in any way, other than demolition.

((W)) X. Structure means something built or constructed, in part or in whole. Examples include, but are not limited to, the following in part or in whole: houses, garages, commercial buildings, mobile homes, bridges, "smoke" stacks, pole-buildings, canopies, lean-tos, and foundations. This term does not include normally mobile equipment (e.g., cars, recreational vehicles, boats, etc.).

((X)) Y. Surfacing Material means material that is sprayed-on, troweled-on, or otherwise applied to surfaces including, but not limited to, acoustical plaster on ceilings, paints, fireproofing material on structural members, or other material on surfaces for decorative purposes.

((Y)) Z. Suspect Asbestos-Containing Material means material that has historically contained asbestos including, but not limited to, surfacing material, thermal system insulation, roofing material (excluding asphalt shingles), fire barriers, gaskets, flooring material, and cement siding. Suspect asbestos-containing material must be presumed to be asbestos-containing material unless demonstrated otherwise (e.g.((z))) as determined using the method specified in the

EPA publication, (Method for the Determination of Asbestos in Building Materials) Method for the Determination of Asbestos in Building Materials, EPA/600/R-93/116, July 1993((j))).

((Z)) AA. Thermal System Insulation (TSI) means material applied to pipes, fittings, boilers, tanks, ducts, or other structural components to prevent heat loss or gain.

AB ((A)). Visible Emissions means any emissions that are visually detectable without the aid of instruments. The term does not include condensed uncombined water vapor.

AC ((B)). Wallboard System means joint compound and tape specifically applied to cover nail holes, joints and wall corners. It does not mean "add on materials" such as sprayed on materials, paints, textured ceilings or wall coverings. A wallboard system where joint compound and tape have become an integral system (40 CFR Part 61 FRL4821-7) may be analyzed as a composite sample for determining if it is an asbestos-containing material.

AD ((C)). Waste Generator means any owner or owner's agent that generates, produces, or is in part or whole, responsible for an activity that results in asbestos-containing waste material.

AE ((D)). Workday means Monday through Friday 8:00 a.m. to 4:30 p.m. excluding legal holidays observed by the Agency. For purposes of filing a notification or notification amendment via SRCAA's website pursuant to Section 9.04, and unless specified otherwise on SRCAA's website, a workday means any day of the week and any time of the day.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Spokane Regional Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

SECTION 9.03 ASBESTOS SURVEY REQUIREMENTS

A. Except as provided for in Section 9.03.F of this Regulation, it shall be unlawful for any person to cause or allow any renovation, demolition, or asbestos project unless the property owner or the owner's agent first obtains an asbestos survey, performed by an AHERA building inspector.

B. Asbestos Survey Procedures.

1. An asbestos survey must consist of a written report resulting from a thorough inspection performed by an AHERA building inspector. The AHERA building inspector must use the procedures in EPA regulations 40 CFR 763.86 or an alternate asbestos survey method pursuant to Section 9.03.F.3 of this Regulation. The inspection, and resulting asbestos survey report, must be performed to determine whether materials, components, or structures to be worked on, renovated, removed, disturbed, impacted, or demolished (including materials on the outside of structures) contain asbestos.

2. Except as provided for in Section 9.03.F of this Regulation, only an AHERA building inspector may determine, by performing an asbestos survey, that a material is not a suspect asbestos-containing material and that a suspect asbestos-containing material does not contain asbestos.

3. The required number of bulk asbestos samples must be collected per the sampling procedures detailed in EPA regulations 40 CFR Part 763.86 and analyzed pursuant to this Article to determine that suspect asbestos-containing material does not contain asbestos.

a. An AHERA building inspector shall collect, in a statistically random manner, a minimum of three bulk samples from each homogeneous area of any surfacing that is not assumed to be asbestos-containing material, and shall collect the samples as follows:

i. At least three (3) bulk samples shall be collected from each homogeneous area that is 1,000 square feet or less.

ii. At least five (5) bulk samples shall be collected from each homogeneous area that is greater than 1,000 square feet but less than or equal to 5,000 square feet.

iii. At least seven (7) bulk samples shall be collected from each homogeneous area that is greater than 5,000 square feet.

b. Except as provided for in 40 CFR 763.86 (b)(2)-(4), an AHERA building inspector shall collect, in a statistically random manner, at least three (3) bulk samples from each homogeneous area of thermal system insulation that is not assumed to be asbestos-containing material.

c. An AHERA building inspector shall collect, in a manner sufficient to determine whether material is asbestos-containing material or not asbestos-containing material, at least two (2) bulk samples from each homogeneous area of any miscellaneous material that is not assumed to be asbestos-containing material.

d. Bulk samples must be analyzed by laboratories accredited by the National Institute of Standards and Technology's (formerly the National Bureau of Standards) National Voluntary Laboratory Accreditation Program (NVLAP) or an equivalent standard approved by SRCAA. Except for wallboard systems as defined in Section 9.02.AC, bulk samples shall not be composited for analysis.

e. Bulk samples shall be analyzed for asbestos content by polarized light microscopy (PLM) using the method specified in the EPA publication, *Method for the Determination of Asbestos in Building Materials*, EPA/600/R-93/116, July 1993 or a more effective method as approved or required by EPA.

((2. Except as provided for in Section 9.03.F of this Regulation, only an AHERA building inspector may determine, by performing an asbestos survey, that a suspect asbestos-containing material does not contain asbestos. Per the sampling procedures detailed in EPA regulations 40 CFR Part 763.86, the required number of bulk asbestos samples must be collected and analyzed pursuant to Section 9.02.D of this Regulation to determine that material does not contain asbestos.

3. Bulk samples must be analyzed for asbestos pursuant to Section 9.02.D of this Regulation by laboratories accredited by the National Voluntary Laboratory Accreditation Program (NVLAP).))

C. Asbestos Survey Report.

These requirements apply to asbestos surveys, regardless of when they were performed. Except where additional information is required pursuant to EPA Regulation 40 CFR Part 763.85, asbestos surveys shall contain, at a minimum, all of the following information:

1. General Information.

a. Date that the inspection was performed;

b. AHERA Building Inspector signature, certification number, date certification expires, and name and address of entity providing AHERA Building Inspector certification;

c. Site address(es)/location(s) where the inspection was performed;

d. Description of the structure(s)/area(s) inspected (e.g., use, approximate age and approximate outside dimensions);

e. The purpose of the inspection (e.g., pre-demolition asbestos survey, renovation of 2nd floor, removal of acoustical ceiling texturing due to water damage, etc.), if known;

f. Detailed description of any limitations of the asbestos survey (e.g., inaccessible areas not inspected, survey limited to renovation area, etc.);

g. Identify and describe all homogeneous areas of suspect asbestos-containing materials ((and their locations)), except where limitations of the asbestos survey identified in Section 9.03.C.1.f (paragraph above) prevented such identification and include whether each homogeneous material is surfacing material, thermal system insulation, or miscellaneous material;

h. Identify materials presumed to be asbestos-containing material;

i. Exact location where each bulk asbestos sample was taken (e.g., schematic and/or other detailed description sufficient for any person to match the material(s) sampled and tested to the material(s) on site);

j. Complete copy of the laboratory report for bulk asbestos samples analyzed, which includes all of the following:

1) Laboratory name, address and NVLAP certification number;

2) Bulk sample numbers;

3) Bulk sample descriptions;

4) Bulk sample results showing asbestos content; and

5) Name of the person at the laboratory that performed the analysis.

2. Information Regarding Asbestos-Containing Materials (including those presumed to contain asbestos).

a. Describe the color of each asbestos-containing material;

b. Identify the location of each asbestos-containing material within a structure, on a structure, from a structure, or otherwise associated with the project (e.g.((;)) schematic and/or other detailed description); ((and))

c. Provide the approximate quantity of each asbestos-containing material (generally in square feet or linear feet)((;)); and

d. Describe the condition of each asbestos-containing material (e.g. good, damaged). If the asbestos-containing material is damaged, describe the general extent and type of damage (e.g., flaking, blistering, crumbling, water damage, fire damage).

D. Asbestos Survey Posting.

Except as provided for in Section 9.03.F of this Regulation, a complete copy of an asbestos survey ((shall) must be posted by the property owner or the owner's agent in a readily accessible and visible area ((at the work site)) at all times for inspection by SRCAA and all persons at the work site. This applies even when the asbestos survey performed by ((H)) an AHERA Building Inspector ((determines)) states there are no ((suspect)) asbestos-containing materials in the work area((;

~~this determination shall be posted by the property owner or the owner's agent in a readily accessible and visible area at the work site for all persons at the work site). During demolition, if it is not practical to post the asbestos survey, it must be readily accessible and made readily available for inspection by SRCAA and all persons at the demolition site.~~

E. Asbestos Survey Retention.

The property owner, owner's agent, and the AHERA building inspector that performed the asbestos survey (when the asbestos survey has been performed by an AHERA building inspector), shall retain a complete copy of the asbestos survey for at least 24 months from the date the inspection was performed and provide a copy to the Agency upon request.

F. Exceptions.

1. Owner-Occupied, Single-Family Residence Renovation Performed by the Owner-Occupant.

For renovation of an owner-occupied, single-family residence performed by the owner-occupant, an asbestos survey is not required. An owner-occupant's assessment for the presence of asbestos-containing material prior to renovation of an owner-occupied, single-family residence is adequate. A written report is not required.

2. Presuming Suspect Asbestos-Containing Materials are Asbestos-Containing Materials.

It is not required that an AHERA building inspector evaluate (e.g.((~~7~~))) sample and test) any material presumed to be asbestos-containing material. If material is presumed to be asbestos-containing material, this determination shall be posted by the property owner or the owner's agent in a readily accessible and visible area at the work site for all persons at the work site. The determination shall include a description, approximate quantity, and location of presumed asbestos-containing material within a structure, on a structure, from a structure, or otherwise associated with the project. The property owner, owner's agent, and the person that determined that material would be presumed to be asbestos-containing material, shall retain a complete copy of the written determination for at least 24 months from the date it was made and shall provide a copy to the Agency upon request. Except for Section 9.03.A-E, all other requirements of this Regulation remain in effect.

3. Alternate Asbestos Survey.

A written alternate asbestos survey method shall be prepared and used on occasions when conventional sampling methods required in EPA regulations 40 CFR 763.86 cannot be exclusively performed (all other asbestos survey requirements in Section 9.03 of this Regulation apply). For example, conventional sampling methods may not be possible on fire damaged buildings or portions thereof((~~7~~))) (e.g. when materials are not intact or homogeneous areas are not identifiable). Conventional sampling methods shall not be used for rubble or debris piles, and ash or soil unless approved otherwise in writing by the Agency((, because they are not structures with intact materials and identifiable homogeneous areas)). If conventional sampling methods cannot exclusively be used and material is not presumed to be asbestos-containing material, (A) alternate asbestos survey methodology ((may)) must be used alone or, when possible, in combination with conventional survey methodology. An alternate asbestos survey methodology typically includes random sampling according

to a grid pattern (e.g.((~~7~~))) random composite bulk samples at incremental 1' depths from 10' x 10' squares of a debris pile), but is not limited to such. An illustration of how the principles of such sampling techniques are applied can be found in the EPA publication, *Preparation of Soil Sampling Protocols: Sampling Techniques & Strategies*, EPA/600/R-92/128, July 1992.

4. Demolition by Fire Fighting Instruction Fires.

Pursuant to RCW 52.12.150(6), asbestos surveys need not be performed by an AHERA Building Inspector. However, pursuant to Section 9.04.A.((~~6~~))) 7.f of this Regulation, the project fee referenced in Section 10.09 and specified in the fee schedule is waived for any demolition performed in accordance with RCW 52.12.150(6), where the good faith inspection referred to in RCW 52.12.150(6) is an asbestos survey performed by an AHERA Building Inspector, as required in Section 9.03.A-E of this Regulation.

5. Underground Storage Tanks.

An asbestos survey is not required prior to renovation or demolition of an underground storage tank. However, if suspect asbestos-containing material is identified during the renovation or demolition of an underground storage tank, work shall cease until it is determined pursuant to Section 9.03((.B and C)) of this Regulation whether or not the suspect asbestos-containing material is asbestos-containing material. All other requirements of this Regulation remain in effect.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Spokane Regional Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

SECTION 9.04 NOTIFICATION (PERMIT) REQUIREMENTS

A. General Requirements.

Except as provided for in Section 9.04.A.((~~6-e~~))7), it shall be unlawful for any person to cause or allow any work on an asbestos project or demolition unless a complete notification, including the required fee and any additional information requested by the Control Officer or his/her authorized representative, has been submitted to the Agency, in accordance with the notification waiting period requirements in Article X, Section 10.09 of this Regulation. Unless otherwise approved or required by SRCAA, the notification must be submitted by the property owner or owner's agent on approved forms through the Agency's website or submitted at the Agency's place of business in person or via U.S. mail. Notifications will not be accepted if the earliest project start date is greater than 365 days from the date of submittal.

1. When the Notification Waiting Period Begins.

The notification waiting period shall begin on the workday a complete notification is received by the Agency and shall end after the notification waiting period in Section 10.09 has passed (e.g., The notification waiting period for a notification submitted at the Agency's place of business after 4:30 p.m. on a Friday shall not begin until the following Monday, provided Monday is not a holiday observed by the Agency. A 10-day notification period means work on an

asbestos project or demolition can begin on day 11.). A notification is considered complete when all information requested on the notification, including the required fee and any additional information requested by the Control Officer or his/her authorized representative, is received by the Agency. The notification waiting period shall not begin for incomplete notifications (e.g., unpaid fees, notifications where the asbestos project start date and/or completion date and/or demolition start date is listed as "To Be Determined", when types and quantities of asbestos to be removed are unknown, etc.).

2. Project Duration

The duration of an asbestos project shall be commensurate with the amount of work involved. The duration of the project may take into account applicable scheduling limitations (e.g.((;)) asbestos removal that needs to be done in phases, based on scheduling limitations determined by the property owner) ((provided scheduling limitations can be provided in writing to the Control Officer or his/her authorized representative upon request)). The daily asbestos project work schedule must be provided by the owner or owner's agent to the Agency upon request.

3. Multiple Asbestos Projects or Demolitions

Notification for 5 or fewer structures may be filed by a property owner or owner's agent on one form if all the following criteria are met:

a. The notification applies only to asbestos projects or demolitions on contiguous real properties having the same owner or real properties with the same owner separated only by a public right-of-way (e.g.((;)) alley or roadway).

b. The work will be performed by the same abatement and/or demolition contractor.

c. The notification includes the specific site address for each structure. Where a specific site address isn't available for each structure (e.g.((;)) at a large commercial ((facility)) site with multiple structures), provide a detailed description/location for each structure.

d. The notification includes the amount and type of asbestos-containing material associated with each structure and indicates which structures will be demolished.

4. Notification Expiration

Notifications are valid for no more than 365 days from the earliest original notification start date. A new notification shall be submitted to the Agency for work to be performed beginning or continuing more than 365 days from the earliest original notification start date and shall be accompanied by the appropriate nonrefundable fee as ((set forth)) referenced in Section 10.09 of this Regulation and as specified in the fee schedule. SRCAA may revoke a notification for cause (e.g. providing any false material statement, representation, or certification). Reason(s) for revocation shall be provided to the owner or owner's agent. If a notification is revoked, a new notification shall be submitted with the appropriate non-refundable fee pursuant to this Regulation and SRCAA's fee schedule.

5. Notification Posting ((Record Keeping))

((a.)) A copy or printout of the notification((;)) and all amendments to the notification((;)) and the complete asbestos survey shall be made available for inspection must be posted by the property owner or the owner's agent in a readily acces-

sible and visible area at all times for inspection by SRCAA and all persons at the asbestos project or demolition site. During demolition, if it is not practical to post the asbestos survey, it must be readily accessible and made readily available for inspection by SRCAA and all persons at the demolition site.

6. Notification Retention

((b. The property owner and owner's agent shall retain a copy of all asbestos notification records for at least 2 years and make them available to the Agency upon request.)) The property owner and owner's agent (including the person that filed the notification), shall retain a complete copy of all notification records for at least 24 months from the date the notification was filed with the Agency and provide a copy to the Agency upon request.

((6)) 7. Notification Exceptions

a. Asbestos Project Thresholds

Notification is not required for asbestos projects involving less than 10 linear feet or 48 square feet (per structure, per calendar year) of any asbestos-containing material. Owners and/or owner's agents must file notification once the 10 linear feet or 48 square feet has been reached on any asbestos project or multiple asbestos project (per structure, per calendar year).

b. Nonfriable Asbestos-Containing Materials: Caulking, Window-Glazing, Roofing

Except for nonfriable roofing removed in accordance with Section 9.09.B (Leaving Nonfriable Asbestos-Containing Roofing Material in Place During Demolition) or Section 9.10 (Exception for Hazardous Conditions), ((N)) notification is not required for removal and disposal of the following non-friable asbestos-containing materials: caulking, window-glazing, or roofing (roofing used on roofs versus other applications). All other asbestos project and demolition requirements remain in effect except as provided by Article IX.

c. Owner-Occupied, Single-Family Residences

For an asbestos project involving an owner-occupied, single-family residence performed by someone other than the resident owner (e.g.((;)) an asbestos removal contractor), it shall be the responsibility of the person performing the asbestos project to submit a complete notification, including the required fee and any additional information requested by the Control Officer or his/her authorized representative, to the Agency, in accordance with the notification waiting period requirements in Article X, Section 10.09 of this Regulation. The notification must be submitted by the owner's agent on approved forms. All other asbestos project and demolition requirements remain in effect except as provided by Article IX.

d. Underground Storage Tanks

Notification is not required for demolition of underground storage tanks with no asbestos. All other asbestos project and demolition requirements remain in effect except as provided by Article IX.

e. Demolition of Structures With a Projected Roof Area ≤ 120 Square Feet

Notification is not required for demolition of structures with a projected roof area less than or equal to 120 square feet, unless asbestos-containing material is present. If asbestos-containing material is present, asbestos project notifica-

tion requirements apply. All other requirements remain in effect except as provided by Article IX.

f. Demolition by Fire Fighting Instruction Fires.

The notification fee in ((Section 10.09)) the fee schedule is waived for any demolition (when the notification project type is for asbestos removal and demolition or the notification project type is demolition with no asbestos removal) performed in accordance with RCW 52.12.150(6), where the good faith inspection referred to in RCW 52.12.150(6) is an asbestos survey performed by an AHERA Building Inspector, as required in Section 9.03.A-E of this Regulation.

g. Abandoned Asbestos-Containing Material.

The Control Officer may waive part or all of the notification waiting period and project fee, by written authorization, for removal and disposal of abandoned (without the knowledge or consent of the property owner) asbestos-containing materials and for demolition of abandoned structures. All other requirements remain in effect.

h. Emergencies.

The advance notification period may be waived pursuant to Section 10.09.A if an asbestos project or demolition must be conducted immediately because of any of the following:

1) There was a sudden, unexpected event that resulted in a public health or safety hazard;

2) The project must proceed immediately to protect equipment, ensure continuous vital utilities, or minimize property damage;

3) Asbestos-containing materials were encountered that were not identified during the asbestos survey; or

4) The project must proceed to avoid imposing an unreasonable financial burden.

i. State of Emergency.

If a state of emergency is declared by an authorized local, state, or federal governmental official due to a storm, flooding, or other disaster, the Control Officer may temporarily waive part or all of the project fee(s) by written authorization. The written authorization shall reference the applicable state of emergency, what fee(s) will be waived, to what extent ((d)) the fee(s) will be waived, and the effective date(s) of the fee(s) waiver.

j. Annual Notification.

A property owner or owner's agent may file one or more annual notifications if all of the following conditions are met:

1) If more than one annual notification is filed for the same real property, there must not be duplication of structures listed on the annual notifications.

2) The total amount of asbestos-containing material for all asbestos projects performed under an annual notification is less than or equal to 259 linear feet and less than or equal to 159 square feet per structure, per calendar year. If any quantity of asbestos-containing material is removed from a structure which is below notification thresholds of 10 linear feet and/or 48 square feet per structure per calendar year, and an annual notification is filed after the removal occurred, the quantity of asbestos-containing material removed from each structure must be applied towards the annual notification removal limits for each structure.

3) The annual notification is valid for one calendar year.

4) The annual notification is exempt from the requirements in Sections 9.04.A.2, 9.04.A.3.b, 9.04.A.3.d, and 9.04.A.4. All other requirements apply.

5) Quarterly reporting forms approved by SRCAA shall be completed and received by SRCAA for the first calendar quarter by April 15, for the second calendar quarter by July 15, for the third calendar quarter by October 15, and for the fourth calendar quarter by January 15. Quarterly reports shall be filed with SRCAA even when no asbestos-containing material is removed for the respective reporting period.

B. Amendments.

((+)) Mandatory Amendments.

((-)) Amendments must be submitted by the person or party that originally submitted the notification unless that person or party explicitly names another person or party that is authorized to file an amendment. An amendment shall be submitted to the Agency for any of the following changes in notification, must be submitted in accordance with Section 9.04.A and the advance notification requirements in Section 10.09 of this Regulation, and if applicable, shall be accompanied by the appropriate nonrefundable fee as set forth in ((Section 10.09 of this Regulation)) the fee schedule:

1. ((a.)) Project Type.

Changes in the project type (e.g. ((,)) from asbestos removal only to asbestos removal and demolition) or cancellation of a project filed under a notification.

2. ((b.)) Job Size.

Increases in the job size category, which increase the fee or changes the advance notification period. For an amendment where the project type or job size category is associated with a higher fee, a fee equal to the difference between the fee associated with the most recently submitted notification and the fee associated with the increased project type or job size category shall be submitted. When there is an increase in the job size category which increases the fee or changes the advance notification period, the additional quantities of asbestos-containing material must be itemized on the amendment form. If the job size increases the 3-day waiting period to a 10-day waiting period, the 10-day waiting period starts from the original notification filing date. If the original notification was filed as an emergency and there is an increase in the job size category which increases the notification fee category, the emergency fee applies to the new fee category.

3. ((e.)) Type of Asbestos.

Changes in the type or new types of asbestos-containing material that will be removed. All types (except as provided for in Section 9.04.A.7.b) and quantities of asbestos-containing material must be itemized on the amendment form.

4. ((d.)) Start/End Dates.

Changes in the asbestos project date (i.e. asbestos removal start date, asbestos removal end date or earliest demolition start date). This includes ((me)) placing a project "on hold" ((or "off hold")) (e.g. ((,)) an asbestos project is temporarily delayed and a new ((start)) project date has not been determined). ((confirmed) or canceling a notification altogether.) Placing a project "on hold" is limited to asbestos projects where the remaining types and quantities of asbestos-containing material to be removed are known. When placing a project "on hold", the remaining types and quantities of asbestos-containing material to be removed from each

structure shall be itemized on the amendment form. If an asbestos project date is placed "on hold", an amendment taking it "off hold" must be filed prior to work on the asbestos project resuming.

((e. Completion Date.)

Changes in the asbestos project completion date including placing a project "on hold" or "off hold" (e.g., an asbestos project is temporarily delayed and a new end date has not been confirmed)).

5. Completion Date.

Except as provided below, in the case of additional work to be performed after the last completion date on record, a new notification shall be submitted to the Agency and shall be accompanied by the appropriate nonrefundable fee as set forth in the fee schedule. Where the notification project type indicates asbestos removal only, the last completion date on record refers to the last asbestos removal completion date on record. Where the notification project type indicates asbestos removal and demolition or demolition with no asbestos removal, the last completion date on record is 365 days from the earliest original notification start date.

a. Completion Date Extension.

Where the notification project type indicates asbestos removal only or asbestos removal and demolition, the last asbestos removal completion date on record has already passed, when an asbestos survey was performed that was designed to address the full scope of the renovation or demolition being performed, and when asbestos-containing materials are discovered unexpectedly prior to or during renovation or demolition and those materials were not identified in an asbestos survey, the owner or owner's agent may request that SRCAA accept an amendment under this section for removal of additional asbestos-containing material. In making the request, the owner or owner's agent shall submit a copy of the asbestos survey to SRCAA. If SRCAA does not approve an amendment under this section, a new notification must be submitted pursuant to Article IX and Section 10.09 for removal of additional asbestos-containing material.

6. Adding Structures.

Adding one or more structures to a previously submitted notification.

a. Amendments cannot be used to add structures to a previously submitted notification unless one or more of the following applies:

1) The structure(s) meet(s) the definition of an owner-occupied, single-family residence and the last completion date on record has not passed; or

2) The structure(s) is/are added prior to the earliest start date listed on the original notification.

b. If the addition of one or more structures will increase the original advance notification waiting period (e.g. 3 day to 10 day), a new notification is required.

c. The multiple asbestos project and demolition requirements in Section 9.04.A.3 and other applicable requirements apply.

((2. Opportunity for Amendment.)

a. Start Date on Record.

An amendment must be submitted on or before the most current asbestos removal start date on record in order to

change the asbestos removal start date or place a project "on hold".

b. Last Completion Date on Record.

In no case shall an amendment be accepted by the Agency if it is filed after the last completion date on record. Where the notification project type indicates asbestos removal only, the last completion date on record refers to the last asbestos removal completion date on record. Where the notification project type indicates asbestos removal and demolition or demolition with no asbestos removal, the last completion date on record is 365 days from the earliest original notification start date.

1) In the case of additional work to be performed after the last completion date on record, a new notification shall be submitted to the Agency and shall be accompanied by the appropriate nonrefundable fee as set forth in Section 10.09 of Article X of this Regulation.

2) Where the notification project type indicates asbestos removal and demolition, the last asbestos removal completion date on record has already passed, and when asbestos-containing materials are encountered prior to or during demolition that were not identified in the asbestos survey, SRCAA may accept an amendment for additional asbestos removal, provided the additional asbestos removal is complete within 365 days from the earliest original notification start date.

c. Canceled Notification.

Once a property owner or owner's agent cancels a notification, it shall be unlawful for any person to cause or allow any work on an asbestos project or demolition unless a new, complete notification, including the required fee and any additional information requested by the Control Officer, has been submitted to the Agency on approved forms through the Agency's website or in person at the Agency's place of business by the property owner or owner's agent, in accordance with the advance notification period requirements contained in Article X, Section 9.04.A and 10.09 of this Regulation.

d. Adding Structures.

Amendments may not be used to add structures to a previously submitted notification if the structure(s) meet(s) the definition of a facility in Section 9.02.)

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Spokane Regional Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

SECTION 9.05 ASBESTOS DISTURBANCE ((REMOVAL REQUIREMENTS))

((A. Removal of Asbestos.)

A. Removal to Prevent Disturbance.

((1.)) Except as provided in Sections 9.05.E and 9.0((8))9-9.10 ((-B-C)) of this Regulation, it shall be unlawful for any person to cause or allow any renovation, demolition, or other action or inaction that may:

1. ((a:)) Disturb asbestos-containing material without first removing all asbestos-containing material in accordance with the requirements of this Regulation; or

2. ((b:)) Damage a structure so as to preclude access to asbestos-containing material for future removal, without first removing all asbestos-containing material in accordance with the requirements of this Regulation.

B. Conditions that will Likely Result in Disturbance.

((2.)) Except as provided in Sections 9.05.E and 9.0.(8)9-9.10 ((A-C)) of this Regulation, it shall be unlawful for any person to create or allow a condition, involving an existing structure or component, that will likely result in the disturbance of asbestos-containing material (e.g., not removing all asbestos-containing material in a structure scheduled for demolition; not completely removing asbestos-containing material identified for removal by the last asbestos removal completion date on record; leaving asbestos-containing material in a state that makes it more susceptible to being disturbed; asbestos-containing material that is peeling, delaminating, crumbling, blistering, or other similar condition; etc.).

C. Reuse.

((3.)) Asbestos-containing material in good condition (as determined in Section 9.03.C.2.d when an asbestos survey is performed) ((need not be removed from a component if the component is)) may be removed for reuse, stored for reuse, or transported for reuse provided it is not disturbed or likely to be disturbed ((without disturbing or damaging the asbestos-containing material)). Asbestos-containing material that is damaged or likely to be disturbed shall not be removed for reuse, stored for reuse or transported for reused. Asbestos-containing material which is stored or transported for reuse must be kept in a secure location and clearly labeled with asbestos warning signs until reuse occurs. If the asbestos-containing material will not be reused or is likely to be disturbed, it must be handled and disposed of in accordance with this Regulation.

D. If Disturbance Occurs.

((4.)) Suspect asbestos-containing material that has been disturbed must be removed as soon as possible and disposed of in accordance with this Regulation unless an asbestos survey, performed in accordance with Section 9.03 of this Regulation, demonstrates that suspect asbestos-containing materials are not asbestos-containing materials.

E. Vermiculite.

Except as provided in Sections 9.09.A and 9.10, it shall be unlawful for any person to cause or allow any renovation, demolition, or other action or inaction that may disturb loose vermiculite containing one percent or less asbestos, including damaging a structure so as to preclude access for future removal, without first removing it to the extent practicable in accordance with Section 9.07 and other applicable requirements of this Regulation. Furthermore, it shall be unlawful for any person to create or allow a condition, involving an existing structure or component that will likely result in the disturbance of loose vermiculite containing one percent or less asbestos (e.g. not removing it to the extent practical in a structure scheduled for demolition; not removing visible vermiculite to the extent practical by the last asbestos removal completion date on record; leaving loose vermiculite containing one percent or less asbestos in a state that makes it more susceptible to being disturbed).

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Spokane Regional Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

SECTION 9.06 PROCEDURES FOR ASBESTOS PROJECTS**A. Training Requirements.**

It shall be unlawful for any person to cause or allow any work on an asbestos project unless it is performed by persons trained and certified in accordance with the standards established by the Washington State Department of Labor & Industries, the federal Occupational Safety & Health Administration, or the United States Environmental Protection Agency (whichever agency has jurisdiction) and whose certification is current. This certification requirement does not apply to asbestos projects conducted in an owner-occupied, single-family residence performed by the resident owner of the dwelling.

B. Standard Asbestos Project Work Practices.

Standard asbestos project work practices require manual removal methods unless otherwise approved by SRCAA. Examples of mechanical work practices approved by SRCAA include, but are not limited to, the use of a stationary fixed blade attached to a motorized vehicle for removal of asbestos-containing floor tile (see also WISHA Interim Interpretive Memorandum #97-7-G) and self-contained shot blasting equipment fitted and operated with HEPA filtration. Standard asbestos work practices require removal of asbestos-containing material using all procedures described in Section 9.06.B.1-6. Except as provided in Sections 9.07-9.10 ((9.08.A-C)) of this Regulation, it shall be unlawful for any person to cause or allow the removal or disturbance of asbestos-containing material unless all the following requirements are met:

1. Controlled Area.

The asbestos project shall be conducted and maintained in a controlled area, clearly marked by barriers and asbestos warning signs. Access to the controlled area shall be restricted to authorized personnel only, including occasions when asbestos abatement is not actively occurring (e.g.((;))) when workers are on break or off-site).

2. Negative Pressure Enclosure.

If a negative pressure enclosure is employed it shall be equipped with transparent viewing ports, if feasible, and shall be maintained in good working order.

3. Wetting Asbestos-Containing Material Prior to and During Removal.

a. Absorbent asbestos-containing materials, such as surfacing material and thermal system insulation, shall be saturated with a liquid wetting agent prior to removal. Wetting shall continue until all the material is permeated with the wetting agent. Any unsaturated absorbent asbestos-containing material exposed during removal shall be immediately saturated with a liquid wetting agent and kept wet until sealed in leak-tight containers.

b. Nonabsorbent asbestos-containing materials, such as cement asbestos board or vinyl asbestos tile, shall be continuously coated with a liquid wetting agent on any exposed surface prior to and during removal. Any dry surfaces of nonabsorbent asbestos-containing material exposed during removal shall be immediately coated with a liquid wetting agent and kept wet until sealed in leak-tight containers.

c. Metal components (such as valves, fire doors, and reactor vessels) that have internal asbestos-containing material do not require wetting of the asbestos-containing material if all access points to the asbestos-containing materials are welded shut or the component has mechanical seals, which

cannot be removed by hand, that separate the asbestos-containing material from the environment.

4. Handling.

Except for surfacing material being removed inside a negative pressure enclosure, asbestos-containing material that is being removed, has been removed, or may have fallen off components during an asbestos project shall be carefully lowered to the ground or the floor, not dropped, thrown, slid, or otherwise damaged.

5. Asbestos-Containing Waste Material.

a. All absorbent, asbestos-containing waste material shall be kept saturated with a liquid wetting agent until sealed in leak-tight containers. All nonabsorbent, asbestos-containing waste material shall be kept coated with a liquid wetting agent until sealed in leak-tight containers.

b. All asbestos-containing waste material resulting from an asbestos project shall be sealed in leak-tight containers as soon as possible after removal, but no later than the end of each work shift.

c. The exterior of each leak-tight container shall be free of all asbestos residue and shall be permanently labeled with an asbestos warning sign as specified by the Washington State Department of Labor and Industries or the federal Occupational Safety and Health Administration.

d. Immediately after sealing, each leak-tight container shall be permanently marked with the date the material was collected for disposal, the name of the waste generator, and the address at which the waste was generated. This marking must be made at the site where the waste was generated and must be readable without opening the container.

e. Leak-tight containers shall not be dropped, thrown, slid, or otherwise damaged.

f. Asbestos-containing waste material shall be stored in a controlled area until transported to, and disposed of at, a waste disposal site approved to accept asbestos-containing waste material.

6. Visible Emissions

No visible emissions shall result from an asbestos project.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Spokane Regional Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

SECTION 9.07 PROCEDURES FOR LOOSE VERMICULITE CONTAINING ONE PERCENT OR LESS ASBESTOS

Except as provided in Sections 9.09.A and 9.10, all of the following asbestos procedures shall be employed for removal or demolition of loose vermiculite containing one percent or less asbestos:

A. Removal

1. The asbestos project shall be conducted and maintained in a controlled area, clearly marked by barriers and asbestos warning signs. Access to the controlled area shall be restricted to authorized personnel only, including occasions when asbestos abatement is not actively occurring (e.g. when workers are on break or off-site).

2. Vermiculite shall be misted or wetted to the extent practicable with a liquid wetting agent prior to and during removal.

3. Vermiculite shall be removed using manual methods or using vacuum systems with HEPA filtered exhaust systems designed for the vacuum system on which it is used. The HEPA filtered exhaust system shall be operated and maintained according to manufacturer specifications.

4. Following vermiculite removal, the work space shall be treated with a post abatement encapsulant (e.g., lock-down encapsulant, penetrating encapsulant).

B. Handling & Disposal

1. After being removed, vermiculite shall immediately be transferred to a leak-tight container.

2. The exterior of each leak-tight container shall be free of all vermiculite residue and shall be permanently labeled with an asbestos warning sign as specified by the Washington State Department of Labor and Industries or the federal Occupational Safety and Health Administration.

3. Immediately after sealing, each leak-tight container shall be permanently marked with the date the material was collected for disposal, the name of the waste generator, and the address at which the waste was generated. This marking must be made at the site where the waste was generated and must be readable without opening the container.

4. Leak-tight containers shall not be dropped, thrown, slid, or otherwise damaged.

5. Asbestos-containing waste material shall be stored in a controlled area until transported to, and disposed of at, a waste disposal site approved to accept asbestos-containing waste material and in accordance with Section 9.11 of this Regulation.

C. Except as provided for in Section 9.07.A.2, no visible emissions shall result from an asbestos project.

Reviser's note: The typographical error in the above material occurred in the copy filed by the Spokane Regional Clean Air Agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

SECTION 9.0((7))8 PROCEDURES FOR NONFRIABLE ASBESTOS-CONTAINING ROOFING MATERIAL

((A. Method of Removal for Nonfriable Asbestos-Containing Roofing Material.)) All of the following asbestos removal methods shall be employed for nonfriable asbestos-containing roofing material as defined in Section 9.02.S of this Regulation:

A. ((1.)) The nonfriable asbestos-containing roofing material shall be removed using methods, such as spud bar and knife, which do not render the material friable. Removal methods such as sanding, grinding, abrading, or sawing shall not be employed under this Section.

B. ((2.)) After being removed, nonfriable asbestos-containing roofing material shall be carefully lowered to the ground or the floor, not dropped, thrown, or otherwise damaged and transferred to a disposal container as soon as possible after removal. In no case shall the transfer occur later than the end of each work shift.

C. ((3.)) Each disposal container shall have a sign identifying the material as nonfriable asbestos-containing roofing material and shall be transported to, and disposed of at, an approved waste disposal site in compliance with Section 9.11 and applicable local, state, and federal regulations.

D. ((4.)) Appropriate dust control methods as provided in Article VI, Section 6.05 of this Regulation shall be used to

~~control fugitive dust emissions)) No visible emissions shall result from an asbestos project.~~

SECTION 9.0((8))~~2~~ ALTERNATE MEANS OF COMPLIANCE

A. Alternate Asbestos Project Work Practices for Removing Asbestos-Containing Material Prior to Renovation or Demolition.

Unless otherwise approved by SRCAA in writing, alternate means of compliance must be used ((W)) where standard asbestos project work practices in Section 9.06.B cannot be utilized to remove asbestos-containing material (financial considerations aside) prior to renovation or demolition((;)); when asbestos-containing material has been disturbed or is otherwise no longer intact (e.g., when demolition has already occurred or a similar situation exists, ((;)) typically leaving a pile/area of debris, rubble, ash, ((and)) or soil((,)) or when mechanical methods are used for removal ((an alternate asbestos removal method may be employed provided it complies)). Projects performed under this section must be performed under the alternate asbestos project work practice notification category and must comply with all of the following:

1. Qualifications of Person(s) Preparing an Alternate Work Plan (AWP).

An AHERA Project Designer ((and a Certified Industrial Hygienist (CIH) or an AHERA Project Designer and a Licensed Professional Engineer (PE))) must evaluate the work area, the type and quantity (known or estimated) of asbestos-containing material, the projected work practices, and the engineering controls and develop an AWP that ensures the planned control methods will be as effective as the work practices in Section 9.06.B of this Regulation.

2. AWP Contents.

The AWP must contain all of the following information:

a. Reason(s) why standard work practices cannot be utilized;

b. Date(s) the work area was evaluated by the person(s) that prepared the AWP;

c. Site address(es)/location(s) where the inspection was performed;

d. The purpose of the evaluation (e.g., asbestos removal from an electrical structure or component where standard wet methods cannot be utilized, removal and disposal of a debris pile resulting from a fire-damaged structure, etc.);

e. If an asbestos survey was performed, incorporate it by reference;

f. All procedures that will be followed for controlling asbestos emissions during the asbestos project;

g. Procedures that will be followed for the final inspection of the property to ensure that asbestos-containing material has been removed and disposed of in accordance with applicable regulations;

h. A statement that the AWP will be as effective as the work practices in Section 9.06.B;

i. Signature(s) of the person(s) that prepared the AWP; and

j. Certification(s) and/or license number(s), and date(s) that certification(s) and/or license(s) expire(s), for the person(s) that prepared the AWP.

3. Asbestos Survey.

If an asbestos survey is not performed pursuant to Section 9.03 of this Regulation, it must be presumed that the asbestos project involves friable and nonfriable asbestos-containing material.

4. AWP Procedures.

The AWP must identify in detail all procedures that will be followed for controlling asbestos emissions during the asbestos project (e.g., during asbestos removal, when workers are off-site, etc.). All procedures and requirements in the AWP must be followed. Unless alternate procedures are specified in the AWP by an AHERA Project Designer ((and a Certified Industrial Hygienist or an AHERA Project Designer and a Licensed Professional Engineer)), the AWP shall include all of the ((following)) requirements in Section 9.0((8))9. A.4.a-f. below. ((of this Regulation:))

a. Controlled Area.

The asbestos project shall be conducted in a controlled area, clearly marked by barriers and asbestos warning signs. Access to the controlled area shall be restricted to authorized personnel only. The controlled area shall protect persons outside the controlled area from potential exposure to airborne asbestos.

b. Wetting.

All materials and debris shall be handled in a wet condition.

1) Absorbent materials shall be saturated with a liquid wetting agent prior to removal. Wetting shall continue until all the material is permeated with the wetting agent. Any unsaturated surfaces exposed during removal shall be wetted immediately.

2) Nonabsorbent materials shall be continuously coated with a liquid wetting agent on any exposed surface prior to and during the removal. They shall be wetted after removal, as necessary, to assure they are wet when sealed in leak-tight containers. Any dry surfaces exposed during removal shall be wetted immediately.

c. Asbestos-Containing Waste Materials.

1) All asbestos-containing waste material and/or asbestos contaminated waste material shall be kept wet and shall be sealed in leak-tight containers while still wet, as soon as possible after removal but no later than the end of each work shift.

2) The exterior of each leak-tight container shall be free of all asbestos residue and shall be permanently labeled with an asbestos warning sign as specified by the Washington State Department of Labor and Industries or the federal Occupational Safety and Health Administration.

3) Immediately after sealing, each leak-tight container shall be permanently marked with the date the material was collected for disposal, the name of the waste generator, and the address at which the waste was generated. This marking must be readable without opening the container.

4) Leak-tight containers shall be kept leak-tight.

5) The asbestos-containing waste material shall be stored in a controlled area until transported to an approved waste disposal site.

d. Air Monitoring.

Procedures that shall be followed for air monitoring at the outside perimeter of the controlled area, both upwind and

downwind, to ensure that the asbestos fiber concentrations do not exceed a net difference (between concurrent upwind and downwind monitoring results) of 0.01 fibers per cubic centimeter (f/cc) as determined by the NIOSH Manual of Analytical Methods, Method 7400 (asbestos and other fibers by PCM).

1) The procedures shall require that any air sampling cassette(s) that become(s) overloaded with dust be immediately replaced. Work shall stop until an AHERA Project Designer ((~~and a Certified Industrial Hygienist or an AHERA Project Designer and a Licensed Professional Engineer~~)) has re-evaluated the engineering controls for dust control, revised the AWP as necessary, and the owner or owner's agent implements all revisions to the AWP.

2) The Agency shall immediately be notified by the owner or owner's agent if the airborne fiber concentrations exceed a net difference of 0.01 f/cc and work shall stop until an AHERA Project Designer ((~~and a Certified Industrial Hygienist or an AHERA Project Designer and a Licensed Professional Engineer~~)) has re-evaluated the engineering controls, revised the AWP as necessary, and the owner or owner's agent implements all revisions to the AWP.

e. Competent Person.

1) A competent person shall be present for the duration of the asbestos project (includes demolition) and shall observe work activities at the site.

2) The competent person shall stop work at the site to ensure that friable asbestos-containing material found in the debris, which can readily be separated, is removed from the main waste stream and is placed and maintained in leak-tight containers for disposal.

3) The competent person shall stop work if AWP procedures are not being followed and shall ensure that work does not resume until procedures in the AWP are followed.

f. Separation of Materials.

If the project involves separation of clean(ed) materials from debris piles (e.g., rubble, ash, soil, etc.) that contain or are contaminated with asbestos-containing materials, the material separation procedures shall be included in the AWP. In addition to these procedures, the following requirements apply:

1) The AWP shall identify what materials will be separated from the asbestos-containing material waste stream and shall describe the procedures that will be used for separating and cleaning the materials. All materials removed from the asbestos-containing waste material stream shall be free of asbestos-containing material.

2) A competent person shall ensure that materials being diverted from the asbestos-containing waste material stream are free of asbestos-containing material.

5. Visible Emissions.

No visible emissions shall result from an asbestos project.

6. Record Keeping.

a. The AWP shall be kept at the work site for the duration of the project and made available to the Agency upon request. The property owner or owner's agent and AHERA Project Designer that prepared the AWP shall retain a complete copy of the AWP for at least 24 months from the date it was prepared and make it available to the Agency upon request.

b. Complete copies of other asbestos-related test plans and reports (e.g., testing soil for asbestos, air monitoring for asbestos, etc.) associated with the project shall also be retained by the property owner or owner's agent for at least 24 months from the date it was performed and made available to the Agency upon request. The person(s) preparing and performing such tests shall also retain a complete copy of these records for at least 24 months from the date it was prepared and make it available to the Agency upon request.

7. Other Requirements.

All applicable local, state, and federal regulations must be complied with.

B. Leaving Nonfriable Asbestos-Containing Roofing Material in Place During Demolition.

Nonfriable asbestos-containing roofing material as defined in Section 9.02_S of this Regulation may be left in place during demolition, except for demolition by burning, if it remains nonfriable during all demolition activities (including handling and disposal) and all of the following are met:

1. A signed and dated written determination was made by an AHERA Project Designer that includes all of the following:

a. A summary of the evaluation performed within the past 12 months, including a description of the type and current condition of asbestos-containing roofing materials;

b. A summary of the work practices and engineering controls that will be used;

c. A determination that nonfriable asbestos-containing roofing material will remain nonfriable during all demolition activities and subsequent disposal of the debris; and

d. The property owner or owner's agent and the AHERA Project Designer that performed the determination shall retain a complete copy of the determination for at least 24 months from the date it was performed and make it available to the Agency upon request.

2. Appropriate dust control methods as provided in Article VI, Section 6.05 of this Regulation shall be used to control fugitive dust emissions.

3. Each disposal container shall have a sign identifying the material as nonfriable asbestos-containing roofing material and shall be transported to, and disposed of at, an approved waste disposal site in compliance with Section 9.11 and applicable local, state, and federal regulations.

((C. Exception for Hazardous Conditions (Leaving Friable and/or Nonfriable Asbestos-Containing Material in Place During Demolition))).

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Spokane Regional Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

SECTION 9.10 EXCEPTION FOR HAZARDOUS CONDITIONS

When the exception for hazardous conditions is being utilized, all of the following apply:

A. Friable and nonfriable asbestos-containing material need not be removed prior to demolition, if it is not accessible (e.g.((?)) asbestos cannot be removed prior to demolition) because of hazardous conditions such as structures or buildings that are structurally unsound, structures or buildings that are in danger of imminent collapse, or other conditions that are immediately dangerous to life and health. ((At a mini-

~~the owner and owner's agent must comply with all of the following:~~

B. An authorized government official or a licensed structural engineer must determine in writing that a hazard exists, which makes removal of asbestos-containing material dangerous to life or health. The determination must be retained for at least 24 months from the date it was prepared and made available to SRCAA by the property owner or owner's agent upon request.

1. Qualifications of Person(s) Preparing an Alternate Work Plan (AWP):

C. An AHERA Project Designer ((and a Certified Industrial Hygienist or an AHERA Project Designer and a Licensed Professional Engineer)) must evaluate the work area, the type and quantity (known or estimated) of asbestos-containing material, the projected work practices, and the engineering controls and develop an ((Alternative Work Plan ())) that ensures the planned control methods will be protective of public health. The AWP must contain all of the following information:

((2. Determination of a Hazardous Condition:

~~An authorized government official or a licensed structural engineer must determine in writing that a hazard exists, which makes removal of asbestos-containing material dangerous to life or health.~~

3. AWP Contents:

~~The AWP must contain all of the following information))~~

1. ((a.)) Date(s) the work area was evaluated by the person(s) that prepared the AWP;

2. ((b.)) Site address(es)/location(s) where the inspection was performed;

3. ((e.)) A copy of the hazardous conditions determination from a government official or licensed structural engineer;

4. ((d.)) If an asbestos survey was performed, include a copy or incorporate it by reference;

5. ((e.)) All procedures that will be followed for controlling asbestos emissions during the asbestos project;

6. ((f.)) A statement that the AWP will be protective of public health;

7. ((g.)) Signature(s) of the person(s) that prepared the AWP; and

8. ((h.)) Certification(s) and/or license number(s), and date(s) that certification(s) and/or license(s) expire(s), for the person(s) that prepared the AWP.

D. ((4.)) AWP Procedures.

((–)) The requirements of Section 9.0((8))9.A.3-7 of this Regulation and all other applicable requirements, including those specified in the AWP, shall be complied with.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Spokane Regional Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

SECTION 9.((09))11 DISPOSAL OF ASBESTOS-CONTAINING WASTE MATERIAL

A. Disposal Within 10 Days of Removal.

Except as provided in Section 9.((09))11.C (Temporary Storage Site) of this Regulation, it shall be unlawful for any person to cause or allow the disposal of asbestos-containing

waste material unless it is deposited within 10 calendar days of removal at a waste disposal site authorized to accept such waste.

B. Waste Tracking Requirements.

It shall be unlawful for any person to cause or allow the disposal of asbestos-containing waste material unless all of the following requirements are met:

1. Maintain waste shipment records, beginning prior to transport, using a separate form for each waste generator that includes all of the following information:

a. The name, address, and telephone number of the waste generator.

b. The approximate quantity in cubic meters or cubic yards.

c. The name and telephone number of the disposal site operator.

d. The name and physical site location of the disposal site.

e. The date transported.

f. The name, address, and telephone number of the transporter.

g. Accurate detailed description of the type of asbestos-containing waste material being disposed of.

((g)) h. A certification that the contents of the consignment are fully and accurately described by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition to transport by highway according to applicable waste transport regulations.

2. Provide a copy of the waste shipment record to the disposal site owner or operator at the same time the asbestos-containing waste material is delivered. If requested by the disposal site operator, a copy of the ((Alternative Work Plan)) AWP or written determination as specified pursuant to Sections 9.0((8))9.9.10((.A-C)) of this Regulation shall also be provided to the disposal site owner or operator at the same time the asbestos-containing waste material is delivered.

3. If a copy of the waste shipment record, signed by the owner or operator of the disposal site, is not received by the waste generator within 35 calendar days of the date the waste was accepted by the initial transporter, contact the transporter and/or the owner or operator of the disposal site to determine the status of the waste shipment.

4. If a copy of the waste shipment record, signed by the owner or operator of the disposal site, is not received by the waste generator within 45 calendar days of the date the waste was accepted by the initial transporter, report in writing to the Control Officer. Include in the report, a copy of the waste shipment record and cover letter signed by the waste generator, explaining the efforts taken to locate the asbestos waste shipment and the results of those efforts.

5. Retain a copy of all waste shipment records for at least 24 months from the date it was generated, including a copy of the waste shipment record signed by the owner or operator of the designated waste disposal site. A copy of asbestos project notifications and corresponding waste shipment records shall be provided to the Agency upon request.

C. Temporary Storage Site.

A person may establish a ((facility)) temporary storage site for the purpose of collecting and temporarily storing asbestos-containing waste material if ((the facility)) it is

approved by the Control Officer and all of the following conditions are met:

1. A complete application for Temporary Storage of asbestos containing waste material is submitted to and approved by the Agency.

2. The application must be accompanied by a non-refundable fee as set in the fee schedule.

3. Accumulated asbestos-containing waste material shall be kept in a controlled storage area posted with asbestos warning signs and accessible only to authorized persons, including Agency representatives and persons authorized by WISHA.

4. All asbestos-containing waste material shall be stored in leak-tight containers which are maintained in leak-tight condition.

5. The storage area must be locked except during transfer of asbestos-containing waste material.

6. Storage, transportation, disposal, and return of the waste shipment record to the waste generator shall not exceed 90 calendar days.

7. Asbestos-Containing Waste Material Temporary Storage Permits approved by the Agency are valid for one calendar year unless a different time frame is specified in the permit.

D. Disposal of Asbestos Cement Pipe.

Asbestos cement pipe used on public right-of-ways, public easements, and places receiving the prior written approval of the Control Officer may be buried in place if the pipe is left intact (e.g., not moved, broken or disturbed) and covered with at least 3 feet or more of non-asbestos fill material. All asbestos cement pipe fragments that are 1 linear foot or less and other asbestos-containing waste material shall be disposed of at a waste disposal site authorized to accept such waste. Pipe bursting asbestos cement pipe or other asbestos-containing material is prohibited.

SECTION 9.1((8))2 COMPLIANCE WITH OTHER RULES

Other government agencies have adopted rules that may apply to asbestos regulated under these rules including, but not limited to, the U.S Environmental Protection Agency, the U.S. Occupational Safety and Health Administration, and the Washington State Department of Labor and Industries. Nothing in the Agency's rules shall be construed as excusing any person from complying with any other applicable local, state, or federal requirement.

Reviser's note: The typographical error in the above material occurred in the copy filed by the Spokane Regional Clean Air Agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

The following section of SRCAA Regulation I is amended:

Section 10.09 – Asbestos Project and Demolition Notification Waiting Period and Fees

SECTION 10.09 ASBESTOS PROJECT AND DEMOLITION NOTIFICATION WAITING PERIOD AND FEES

A. Written notification, as required in Article IX, Section 9.04, shall be in accordance with the waiting period in the tables that follow and shall be accompanied by the appropriate nonrefundable fee, as specified in the fee schedule. Refunds are allowable for overpayments which are identified within thirty days of the notification filing date.

Owner-occupied, single-family residence	Waiting Period
> 0 ln ft and/or > 0 sq ft asbestos performed by residing owner	Notification Not Required
< 10 ln ft and/or < 48 sq ft asbestos not performed by residing owner	Notification Not Required
≥ 10 ln ft and/or ≥ 48 sq ft asbestos not performed by residing owner	Prior Notice
All Demolition	3 Days

Not owner-occupied, single-family residence	Waiting Period
< 10 ln ft and/or < 48 sq ft asbestos, but asbestos removal threshold of ≥ 10 ln ft and/or ≥ 48 sq ft has not been exceeded for structure in calendar year and project WILL NOT exceed threshold of > 10 ln ft and/or > 48 sq ft asbestos removal from structure in calendar year	Notification Not Required
Project consists of < 10 ln ft and/or < 48 sq ft of asbestos removal, but ≥ 10 ln ft and/or ≥ 48 sq ft asbestos has already been removed from structure in calendar year or project WILL exceed threshold of ≥ 10 ln ft and/or ≥ 48 sq ft asbestos removal from structure in calendar year	Prior Notice
10-259 ln ft and/or 48-159 sq ft asbestos	3 Days
260-999 ln ft and/or 160-4,999 sq ft asbestos	10 Days
≥ 1,000 ln ft and/or ≥ 5,000 sq ft asbestos	10 Days
All Demolition	10 Days

Additional categories	Waiting Period	Reference
Emergency	Prior Notice*	Sect. 9.04.A. ((6))7.h.
Annual Notification (≤ 259 ln ft and/or ≤ 159 sq ft)	Prior Notice	Sect. 9.04.A. ((6))7.j
Amendment	Prior Notice	Section 9.04.B.
Alternate Asbestos Project Work Practices	10 days	Section 9.0((8))9.A.

Additional categories	Waiting Period	Reference
Demolition with Non-friable Asbestos Roofing	10 days	Section 9.0((8)) <u>9.B.</u>
Exception for Hazardous Conditions	10 days	Section 9. <u>10((08.C.))</u>

* If prior notice isn't possible because of life endangerment or other serious consequences, the Agency may accept, at its discretion, a completed emergency notification if it is filed no later than the first regular Agency work day after the asbestos project and/or demolition commenced.

B. The Board shall periodically review the fee schedule for notifications submitted pursuant to Section 9.04 and determine if the total projected fee revenue to be collected pursuant to this Section is sufficient to fully recover program costs. Any proposed fee revisions shall include opportunity for public review and comment. Accordingly, the Agency shall account for program costs. If the Board determines that the total projected fee revenue is either significantly excessive or deficient for this purpose, then the Board may amend the fee schedule to more accurately recover program costs.

Reviser's note: The typographical error in the above material occurred in the copy filed by the Spokane Regional Clean Air Agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

WSR 14-05-069
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed February 18, 2014, 10:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-15-126.

Title of Rule and Other Identifying Information: The department is amending chapter 388-71 WAC, Home and community services programs, and creating chapter 388-113 WAC, Disqualifying crimes and negative actions, regarding background checks.

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), on April 22, 2014, at 10:00 a.m.

Date of Intended Adoption: Not earlier than April 23, 2014.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAU RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on April 22, 2014.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by April 1, 2014, TTY (360) 664-6178 or (360) 664-6094 or by e-mail jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending chapter 388-71 WAC and creating chapter 388-113 WAC, to support the health and safety of clients, to consolidate the various DSHS secretary's lists of crimes and negative actions in the aging and long-term support administration thus providing a uniform background check standard for all caregivers, and to reduce the overall costs of processing background checks

Reasons Supporting Proposal: Read the purpose statement above.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520, 74.39A.056.

Statute Being Implemented: RCW 74.08.090, 74.09.520, 74.39A.056.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Stacy Graff, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2533.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

SUMMARY OF PROPOSED RULES: The department of social and health services' home and community services division (HCS) is proposing amendments to home and community programs, chapter 388-71 WAC, and new rules regarding disqualifying crimes and negative actions in chapter 388-113 WAC.

The purpose of this chapter is to: Consolidate background check rules and implement uniform criminal history standards between the aging and long-term support administration (ALTS) and the developmental disabilities administration (DDA), which frequently use the same settings and provider pool.

The proposed amendments to this chapter and the new chapter include:

(1) Aligning disqualifying criminal history standards with ALTS; and

(2) Creating grandfathering language for workers hired and qualified prior to implementation of new standards, for all but the most egregious crimes.

SMALL BUSINESS ECONOMIC IMPACT STATEMENT—DETERMINATION OF NEED: Chapter 19.85 RCW, the Regulatory Fairness Act, requires that the economic impact of proposed regulations be analyzed in relation to small businesses. This proposal related to background check consolidation will not have a disproportionate economic impact on small businesses. The department has thoroughly reviewed background check inefficiencies in place with current rules, as written including:

(1) Duplicate background check requirements for same staff person, driven by current rules;

(2) Conflicting rules in place for same provider/same setting serving clients from two administrations of DSHS (e.g. HCS and DDA);

(3) Poor compliance with program rules due to background check complexity, and varying standards; and

(4) Negative fiscal and workload impact on both small and large business resulting from regulatory work, contradictory standards, duplicate background check requirements and training needs.

The consolidation and standardization of background check rules across the ALTSA and DDA administration will result in clarity of rules, efficiency in checks, reduced training needs, improved compliance and will significantly reduce the number of duplicate background checks conducted by affected businesses across the state.

INDUSTRY ANALYSIS: These proposed rules impact all small business[es] contracted to provide direct service to clients of HCS including: Assisted living facilities (ALF) (approximately four hundred) and adult family homes (AFH) (approximately two thousand two hundred fifty used by HCS clients).

The majority of these businesses meet the definition of small business defined in RCW 19.85.020. Again, HCS has concluded any negative impact to any specific small business would be negligible and the impact on the industry as a whole will be fiscally positive, while improving the health and safety of vulnerable populations served by two administrations.

INVOLVEMENT OF SMALL BUSINESSES: These rule changes were driven, in part, by demand from businesses. Working drafts have also been shared with stakeholders (including ALFs, AFHs, and unions), both in person and electronically. Stakeholder input is reflected in the proposed rules.

COST OF COMPLIANCE: Under chapter 19.85 RCW, HCS has considered annual costs to small businesses and concluded there will be no impact of fifty dollars or more per client.

GENERAL COSTS: HCS analysis revealed that there are no significant costs imposed by the proposed amendments.

Disproportionate Economic Impact Analysis: None.

Mitigating Costs: Not applicable.

Benefits for Proposed Rules: See above.

JOBS CREATED OR LOST: Not applicable.

CONCLUSION: HCS has given careful consideration to the impact of proposed rules in chapter 388-71 WAC, Home and community programs rules, and the new chapter 388-113 WAC, Disqualifying crimes and negative actions, on small businesses. To comply with the Regulatory Fairness Act, chapter 19.85 RCW, HCS has analyzed impacts on small businesses and concluded there are no significant costs as a result of this rule making.

HCS has concluded that the intent of these rule making changes are to improve the health and safety of vulnerable populations served by ALTSA and DDA.

Please contact Barbara Hanneman if you have any questions at (360) 725-2525.

A copy of the statement may be obtained by contacting Angel Sullivan, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-2495, fax (360) 407-7582, e-mail angel.sullivan@dshs.wa.gov.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by

contacting Angel Sullivan, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-2495, fax (360) 407-7582, e-mail angel.sullivan@dshs.wa.gov.

February 13, 2014
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0500 What is the purpose of this chapter? The purpose of this chapter is to describe the:

(1) Qualifications of an individual provider, as defined in WAC 388-106-0010;

(2) Qualifications of a long-term care worker employed by a home care agency, as defined in WAC 388-106-0010 and chapter 246-335 WAC;

(3) Conditions under which the department or the area agency on aging (AAA) will pay for the services of an individual provider or a home care agency long-term care worker;

(4) Training requirements for an individual provider and home care agency long-term care worker;

(5) Client's options for obtaining a long-term care worker. A client, as described in WAC 388-71-0836, eligible to receive long-term care services, or his/her legal representative acting on the client's behalf, may choose to receive personal care services in the client's home from an individual provider or a long-term care worker from a home care agency. If the client chooses to receive services from a home care agency, the agency will assign a long-term care worker employed by the agency to provide services to the client. Individual providers and home care agency long-term care workers are "long-term care workers" as defined in RCW 74.39A.009 and are subject to background checks under RCW ((74.39A.055)) 74.39A.056 and ((43.20.710)) 43.20A.710; and

(6) Contracting requirements.

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0510 How does a person become an individual provider? In order to become an individual provider, a person must:

(1) Be eighteen years of age or older;

(2) Provide the social worker/case manager/designee with:

(a) A valid Washington state driver's license or other valid picture identification; and either

(b) A Social Security card; or

(c) Proof of authorization to work in the United States.

(3) Complete the required DSHS form authorizing a background check;

(4) Disclose any ((disqualifying)) criminal convictions and pending charges, and also disclose civil adjudication proceedings and negative actions as those terms are defined in WAC 388-71-0512;

(5) Effective January 8, 2012, be screened through Washington state's name and date of birth background check.

Preliminary results may require a thumb print for identification purposes.

(6) Effective January 8, 2012, be screened through the Washington state and national fingerprint-based background check, as required by RCW 74.39A.056.

(7) Results of background checks are provided to the department and the employer or potential employer unless otherwise prohibited by law or regulation for the purpose of determining whether the person:

(a) Is disqualified based on a disqualifying criminal conviction((5)) or a pending charge for a disqualifying crime as listed in WAC 388-113-0020, civil adjudication proceeding, or negative action as defined in WAC 388-71-0512 and 388-71-0540; or

(b) Should or should not be employed as an individual provider based on his or her character, competence, and/or suitability.

(8) ((Disqualifying crimes, civil adjudication proceedings, and negative actions are listed in WAC 388-71-0540 (4), (5) and (6).)

((9)) For those providers listed in RCW 43.43.837(1), a second Washington state and national fingerprint-based background check is required if they have lived out of the state of Washington since the first national fingerprint-based background check was completed.

((10)) (9) The department may require an individual provider to have a Washington state name and date of birth background check or a Washington state and national fingerprint-based background check, or both, at any time.

((11)) (10) Sign a home and community-based service provider contract/agreement to provide personal care services to a person under a medicaid state plan or federal waiver such as COPES or other waiver programs.

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0513 Is a background check required of a long-term care worker employed by a home care agency licensed by the department of health? In order to be a long-term care worker employed by a home care agency, a person must:

(1) Complete the required DSHS form authorizing a background check.

(2) Disclose any disqualifying criminal convictions and pending charges as listed in WAC 388-113-0020, and also disclose civil adjudication proceedings and negative actions as those terms are defined in WAC 388-71-0512.

(3) Effective January 8, 2012, be screened through Washington state's name and date of birth background check. Preliminary results may require a thumb print for identification purposes.

(4) Effective January 8, 2012, be screened through the Washington state and national fingerprint-based background check, as required by RCW 74.39A.056.

(5) Results of background checks are provided to the department and the employer or potential employer for the purpose of determining whether the person:

(a) Is disqualified based on a disqualifying criminal conviction((5)) or a pending charge for a disqualifying crime as

listed in WAC 388-113-0020, civil adjudication proceeding, or negative action as defined in WAC 388-71-0512 and listed in WAC 388-71-0540; or

(b) Should or should not be employed based on his or her character, competence, and/or suitability.

(6) ((Disqualifying crimes, civil adjudication proceedings, and negative actions are listed in WAC 388-71-0540 (4), (5) and (6).)

((7)) For those providers listed in RCW 43.43.837(1), a second national fingerprint-based background check is required if they have lived out of the state of Washington since the first national fingerprint-based background check was completed.

((8)) (7) The department may require a long-term care worker to have a Washington state name and date of birth background check or a Washington state and national fingerprint-based background check, or both, at any time.

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0540 When will the department, AAA, or department designee deny payment for services of an individual provider or home care agency long-term care worker? The department, AAA, or department designee will deny payment for the services of an individual provider or home care agency provider:

(1) When the services are provided by an employee of the home care agency who is related by blood, marriage, adoption, or registered domestic partnership to the client;

(2) When he or she is the client's spouse, except in the case of an individual provider for a chore services client. Note: For chore spousal providers, the department pays a rate not to exceed the amount of a one-person standard for a continuing general assistance grant, per WAC 388-478-0020;

(3) When he or she is the natural/step/adoptive parent of a minor client aged seventeen or younger receiving services under medicaid personal care;

(4) When he or she is a foster parent providing personal care to a child residing in their licensed foster home;

(5) When he or she has had any of the following:

(a) A history of noncompliance with federal or state laws or regulations in the provision of care or services to children or vulnerable adults;

(b) ((A conviction or pending charge for a crime in federal court or in any other state, when the department determines that the crime is equivalent to a crime under subsections (e), (d), (e), (f), or (g) below;

(e) A conviction or pending charge for a "crime against children or other persons" as defined in RCW 43.43.830, unless the crime is simple assault, assault in the fourth degree, or prostitution and more than three years has passed since conviction;

(d) A conviction or pending charge for "crimes relating to financial exploitation" as defined in RCW 43.43.830, unless the crime is theft in third degree and more than three years have passed since conviction, or unless the crime is forgery or theft in the second degree and more than five years has passed since conviction;

~~(e) A conviction or pending charge for a "crime relating to drugs" which is the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance under one of the following:~~

- ~~(i) Violation of the Imitation Controlled Substances Act (VICSA);~~
- ~~(ii) Violation of the Uniform Controlled Substances Act (UUCSA);~~
- ~~(iii) Violation of the Uniform Legend Drug Act (VULDA); or~~
- ~~(iv) Violation of the Uniform Precursor Drug Act (VUPDA).~~

~~(f) A conviction or pending charge for sending or bringing into the state depictions of a minor engaged in sexually explicit conduct;~~

~~(g) A conviction or pending charge for criminal mistreatment;~~

~~((h)) When he or she has a conviction or pending charge for a disqualifying crime listed in WAC 388-113-0020 (1), (2) or equivalent conviction or pending charge as described in WAC 388-113-0020(3).~~

~~(c) Been found to have abused, neglected, financially exploited, or abandoned a minor or vulnerable adult by court of law or a disciplining authority, including the department of health. Examples of legal proceedings in which such findings could be made include juvenile court proceedings under chapter 13.34 RCW, domestic relations proceeding under Title 26 RCW (~~and vulnerable adult protection proceedings under chapter 74.34 RCW~~), or proceedings involving a court ordered permanent restraining order or order of protection, either active or expired, against the individual that was based upon abuse, neglect, financial exploitation or mistreatment of a minor or vulnerable adult;~~

~~((i)) (d) A finding of abuse or neglect of a child under RCW 24.44.020 and chapter 388-15 WAC that is:~~

~~(i) Listed on the department's background check central unit (BCCU) report; or~~

~~(ii) Disclosed by the individual, except for findings made before December, 1998. Findings made before December 1998 require a character, competence, and suitability determination.~~

~~((j)) (e) A finding of abuse, neglect, financial exploitation, or abandonment of a vulnerable adult that is:~~

~~(i) Listed on any registry, including the department's registry;~~

~~(ii) Listed on the department's background check central unit (BCCU) report; or~~

~~(iii) Disclosed by the individual, except for adult protective services findings made before October 2003. Findings made before October 2003 require a character, competence, and suitability determination.~~

~~(6) Who has registered sex offender status:~~

~~(7) Who has had a license, certification, medicaid or medicare provider agreement, or a contract for the care of children or vulnerable adults denied, suspended, revoked, not renewed, or terminated, for noncompliance with state and/or federal regulations;~~

~~((7)) (8) Who obtained or attempted to obtain a license, certification or contract by fraudulent means or misrepresentation;~~

~~((8)) (9) Who knowingly, or with reason to know, made a false statement of material fact on his or her application for a license, certification, contract or any data attached to the application, or in any matter involving the department;~~

~~((9)) (10) Who willfully prevented or interfered with or failed to cooperate with any inspection, investigation, or monitoring visit made by the department, including refusal to permit authorized department representatives to interview clients or have access to their records;~~

~~((10)) (11) When the client's assessment or reassessment does not identify an unmet need;~~

~~((11)) (12) Who is terminated by the client (in the case of an individual provider) or by the home care agency (in the case of an agency provider);~~

~~((12)) (13) Who does not successfully complete applicable training requirements, within the timeframes described in WAC 388-71-0875, 388-71-0880, 388-71-0890 and 388-71-0991. If an individual provider or long-term care worker employed by a home care agency does not complete required training within the required timeframe, and:~~

~~(a) If the worker is not required to be a certified home care aide, then the long-term care worker may not provide care until the training is completed; or~~

~~(b) If the worker is required to be a certified home care aide, then the long-term care worker may not provide care until the certification has been granted.~~

~~((13)) (14) Who does not successfully complete the certification or recertification requirements as described under WAC 388-71-0975; or~~

~~((14)) (15) Who has had a home care aide certification denied, suspended, or revoked. If the individual is otherwise qualified, payment for services may resume when his or her certification has been reissued.~~

In addition, the department, AAA, or department designee may deny payment to or terminate the contract of an individual provider as provided under WAC 388-71-0543, 388-71-0546, and 388-71-0551.

Reviser's note: The unnecessary underscoring in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0546 When may the department, AAA, or department designee reject your choice of an individual provider? The department, AAA, or department designee may reject your request to have a family member or other person serve as your individual provider if the case manager has a reasonable, good faith belief that the person is, or will be, unable to appropriately meet your needs. Examples of circumstances indicating an inability to meet your needs include, but are not limited to:

~~(1) Evidence of misuse of alcohol, controlled substances, or legend drugs;~~

~~(2) A reported history of domestic violence committed by the individual provider, no-contact orders entered against the individual provider, or criminal conduct committed by the individual provider (whether or not the conduct is automati-~~

cally disqualifying under WAC 388-71-0540 or under chapter 388-113 WAC;

(3) A report from any knowledgeable person that the individual provider lacks the ability or willingness to provide adequate care;

(4) The individual provider has other employment or responsibilities that prevent or interfere with the provision of required services; or

(5) Excessive commuting distance that would make it impractical for the individual provider to provide services as they are needed and outlined in your service plan.

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0551 When may the department, AAA, or department designee terminate an individual provider's contract? The department, AAA, or department designee may terminate an individual provider's contract to provide personal care services under this chapter or chapters 388-106 and 388-112 WAC if the provider's inadequate performance or inability to deliver quality care is jeopardizing the client's health, safety, or well-being. Examples include, but are not limited to:

(1) The provider's home care aide certification has been revoked;

(2) The provider's inadequate performance or inability to deliver quality care is jeopardizing the client's health, safety, or well-being;

(3) The department has determined that the provider lacks the character, competence or suitability necessary to protect the client's health, safety or well-being; and

(4) The provider has a disqualifying criminal conviction or a pending charge for a disqualifying crime under chapter 388-113 WAC or equivalent conviction or pending charge;

(5) The provider has been the subject of a negative action as described in WAC 388-71-0540; and

(6) The department, AAA or department designee may also terminate the individual provider's contract in accordance with the terms of the contract.

Chapter 388-113 WAC

Disqualifying Crimes and Negative Actions

NEW SECTION

WAC 388-113-0005 What is the purpose of this chapter? The purpose of this chapter is to describe the:

(1) Criminal convictions, pending charges, and negative actions that automatically disqualify an individual from having unsupervised access to vulnerable adults or minors who are receiving services under:

(a) Chapter 388-71 WAC: Home and community services and programs, including individual providers and employees of home care agencies;

(b) Chapter 388-101 WAC: Certified community residential services and supports;

(c) Chapter 388-76 WAC: Licensed adult family homes;

(d) Chapter 388-78A WAC: Licensed assisted living facilities;

(e) Chapter 388-97 WAC: Licensed nursing homes;

(f) Chapter 388-825 WAC: Developmental disabilities administration programs; and

(g) Chapter 388-107 WAC: Licensed enhanced services facilities.

(2) Exceptions to automatic disqualifications that may apply to certain criminal convictions and pending charges.

NEW SECTION

WAC 388-113-0010 What definitions apply to this chapter? "Department" means the Washington state department of social and health services.

"Drug" means a:

- (a) Controlled substance as defined in RCW 69.50.101;
- (b) Legend drug, as defined in RCW 69.41.010;
- (c) Precursor drug under Chapter 69.43 RCW; or
- (d) Imitation controlled substance, as defined in RCW 69.52.020.

"Minor" means any person under the age of eighteen.

"Pending Charge" means a criminal charge for a disqualifying crime has been filed in a court of law for which the department has not received documentation showing the disposition of the charge.

"Unsupervised" means not in the presence of:

(a) Another employee or volunteer from the same business or organization as the applicant; or

(b) Any relative or guardian of any of the minors or vulnerable adults to which the applicant has access during the course of his or her employment or involvement with the business or organization.

"Vulnerable Adult" is defined in RCW 74.34.020(17).

NEW SECTION

WAC 388-113-0020 Which criminal convictions and pending charges automatically disqualify an individual from having unsupervised access to adults or minors who are receiving services in a program under chapters 388-71, 388-101, 388-76, 388-78A, 388-97, 388-825, and 388-107 of the Washington Administrative Code (WAC)? (1) Individuals who must satisfy background checks requirements under chapters 388-71, 388-101, 388-76, 388-78A, 388-97, 388-825, and 388-107 of the Washington Administrative Code (WAC) may not work in a position that may involve unsupervised access to minors or vulnerable adults if he or she has been convicted of or has a pending charge for one of the following crimes:

- (a) Abandonment of a child;
- (b) Abandonment of a dependent person;
- (c) Abuse or neglect of a child;
- (d) Arson 1;
- (e) Assault 1;
- (f) Assault 2;
- (g) Assault 3;
- (h) Assault 4/simple assault (less than 3 years);
- (i) Assault of a child;
- (j) Burglary 1;
- (k) Child buying or selling;
- (l) Child molestation;
- (m) Coercion (less than 5 years);

- (n) Commercial sexual abuse of a minor/patronizing a juvenile prostitute;
- (o) Communication with a minor for immoral purposes;
- (p) Controlled substance homicide;
- (q) Criminal mistreatment;
- (r) Custodial assault;
- (s) Custodial interference;
- (t) Custodial sexual misconduct;
- (u) Dealing in depictions of minor engaged in sexual explicit conduct;
- (v) Domestic violence (felonies only);
- (w) Drive-by shooting;
- (x) Drug crimes, if they involve one or more of the following:
 - (i) Manufacture of a drug;
 - (ii) Delivery of a drug; and
 - (iii) Possession of a drug with the intent to manufacture or deliver.
- (y) Endangerment with a controlled substance;
- (z) Extortion;
- (aa) Forgery (less than 5 years);
- (bb) Homicide by abuse, watercraft, vehicular homicide (negligent homicide);
- (cc) Identity theft (less than 5 years);
- (dd) Incendiary devices (possess, manufacture, dispose);
- (ee) Incest;
- (ff) Indecent exposure/public indecency (Felony);
- (gg) Indecent liberties;
- (hh) Kidnapping;
- (ii) Luring;
- (jj) Malicious explosion 1;
- (kk) Malicious explosion 2;
- (ll) Malicious harassment;
- (mm) Malicious placement of an explosive 1;
- (nn) Malicious placement of an explosive 2 (less than 5 years);
- (oo) Malicious placement of imitation device 1 (less than 5 years);
- (pp) Manslaughter;
- (qq) Murder/aggravated murder;
- (rr) Possess depictions minor engaged in sexual conduct;
- (ss) Promoting pornography;
- (tt) Promoting prostitution 1;
- (uu) Promoting suicide attempt (less than 5 years);
- (vv) Prostitution (less than 3 years);
- (ww) Rape;
- (xx) Rape of child;
- (yy) Residential Burglary;
- (zz) Robbery;
- (aaa) Selling or distributing erotic material to a minor;
- (bbb) Sending or bringing into the state depictions of a minor engaged in sexually explicit conduct;
- (ccc) Sexual exploitation of minors;
- (ddd) Sexual misconduct with a minor;
- (eee) Sexually violating human remains;
- (fff) Stalking (less than 5 years);
- (ggg) Theft 1;
- (hhh) Theft 2 (less than 5 years);
- (iii) Theft 3 (less than 3 years);
- (jjj) Unlawful imprisonment

- (kkk) Unlawful use of building for drug purposes (less than 5 years);
- (lll) Use of machine gun in a felony;
- (mmm) Vehicular assault;
- (nnn) Violation of temporary restraining order or preliminary injunction involving sexual or physical abuse to a child;
- (ooo) Violation of a temporary or permanent vulnerable adult protection order (VAPO) that was based upon abandonment, abuse, financial exploitation, or neglect; and
- (ppp) Voyeurism.

(2) If "(less than 5 years)" or "(less than 3 years)" appears after a crime listed in subsection (1) above, the individual is not automatically disqualified if the required number of years has passed since the date of the conviction. For example, if three or more years have passed since an individual was convicted of Theft in the 3rd degree that conviction would not be automatically disqualifying. If the required number of years has passed, the employer must conduct an overall assessment of the person's character, competence, and suitability before allowing unsupervised access to vulnerable adults and minors.

(3) When the department determines that a conviction or pending charge in federal court or in any other court, including state court is equivalent to a Washington state crime that is disqualifying under this section, the equivalent conviction or pending charge is also disqualifying.

NEW SECTION

WAC 388-113-0030 Where do I find what negative actions are disqualifying? In addition to disqualifying convictions and pending charges for disqualifying crimes, individuals are disqualified from working in positions involving unsupervised access to minors or vulnerable adults under chapters 388-71, 388-101, 388-76, 388-78A, 388-97, 388-825 and 388-107 WAC if certain findings have been made or certain actions have been taken against them. These disqualifying findings and actions are referred to as "negative actions" and they are listed in the following program rules:

- (1) Home and community services and programs, including individual providers and employees of home care agencies: chapter 388-71 WAC;
- (2) Certified community residential services and supports: chapter 388-101 WAC;
- (3) Adult family homes: chapter 388-76 WAC;
- (4) Assisted living facilities: chapter 388-78A WAC;
- (5) Nursing homes: chapter 388-97 WAC;
- (6) Developmental disabilities administration programs: chapter 388-825 WAC; and
- (7) Enhanced services facilities: chapter 388-107 WAC.

NEW SECTION

WAC 388-113-0040 Are there any exceptions to the automatic disqualification under WAC 388-113-0020? (1) Under the conditions described in this section, an individual is not automatically disqualified from having unsupervised access to minors and vulnerable adults if he or she:

- (a) Has worked continuously for the same employer for whom he or she was working on December 31, 2013; and

(b) Does not have a conviction or pending charge that was automatically disqualifying under rules that were in effect on December 31, 2013; and

(c) Works for a program or facility that operates under chapters 388-71 WAC (individual providers and home care agencies), 388-76 WAC (adult family home), 388-78A WAC (assisted living facility) or 388-97 WAC (nursing homes) and was convicted of, or has a pending charge for:

(i) Residential burglary;

(ii) Unlawful use of building for drug purposes (5 or more years);

(iii) Vehicular assault; or

(d) Works for a program or facility that operates under chapter 388-825 WAC (developmental disabilities administration programs) or supported living and was convicted of, or has a pending charge for:

(i) Assault 3;

(ii) Manufacture of a controlled substance;

(iii) Delivery of a controlled substance; or

(iv) Possession of a controlled substance with the intent to manufacture or deliver.

(2) In addition to the requirements under subsection (1), in order for an individual to be eligible for an exception under this section, the following conditions must also be satisfied:

(a) The conviction date for the crimes listed in (1)(c) and (d) must be before January 1, 2014;

(b) The individual has to continue to work for the same employer; and

(c) The employer or hiring entity must:

(i) Review the individual's character, competence and suitability to have unsupervised access to minors or to vulnerable adults, and;

(ii) Have documentation on file demonstrating the results of the character, competence and suitability review; and

(iii) Have documentation on file demonstrating that the individual meets all of the conditions in this section (2), including a copy of a background check result letter dated prior to December 31, 2013, indicating the individual was not disqualified from having unsupervised access to minors or vulnerable adults.

SECTIONS BEING AMENDED: WAC 388-825-335 Is a background check required of a home care agency?, 388-825-375 When will the department deny payment for services of an individual or home care agency providing respite care, attendant care, or personal care services?, 388-825-380 When can the department reject the client's choice of an individual respite care, attendant care or personal care provider?, 388-825-385 When can the department terminate or summarily suspend an individual respite care, attendant care, or personal care provider's contract?, 388-829A-290 When may DDD not authorize payment or terminate a contract for alternative living services?, 388-829A-300 When must DDD deny the client's choice of an alternative living provider?, 388-829C-460 When may DDD stop the authorization for payment or terminate a contract for companion home services? and 388-829C-470 When may DDD deny the client's choice of a companion home provider?; and NEW SECTIONS: WAC 388-825-0600 What definitions apply to WAC 388-825-0600 through 388-825-0690 of this chapter?, 388-825-0605 Why are background checks done?, 388-825-0610 Who must have a Washington state and/or federal background check?, 388-825-0615 What is the process for obtaining a background check?, 388-825-0620 Who must have background check renewals?, 388-825-0625 What happens if I don't comply with the background check requirement?, 388-825-0630 What does the background check cover?, 388-825-0635 Who pays for the background check?, 388-825-0640 What criminal convictions, pending crimes or negative actions will prohibit me from being contracted or authorized to work in a capacity that may involve unsupervised access to individuals with a developmental disability?, 388-825-0645 May an individual work in an unsupervised capacity with individuals with developmental disabilities when their background check reveals a crime or negative action that is not considered disqualifying per chapter 388-113 WAC or WAC 388-825-0640?, 388-825-0650 What does a character, competence and suitability review include?, 388-825-0655 How will I know if I have been disqualified by the background check?, 388-825-0660 May I appeal the department's decision to deny me a contract or authorization based on the results of the background check?, 388-825-0665 Is the background check information released to my employer or prospective employer?, 388-825-0670 May I receive a copy of my criminal background check results?, 388-825-0675 What is the purpose of the one hundred twenty-day provisional hire?, 388-825-0680 Who is responsible for approving the one hundred twenty-day provisional hire?, 388-825-0685 When are individuals eligible for the one hundred twenty-day provisional hire?, and 388-825-0690 When does the one hundred twenty-day provisional hire begin?

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), on April 22, 2014, at 10:00 a.m.

Date of Intended Adoption: Not earlier than April 23, 2014.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAU

WSR 14-05-070
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Developmental Disabilities Administration)

[Filed February 18, 2014, 10:26 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-15-125.

Title of Rule and Other Identifying Information: Changes to some sections in chapters 388-825, 388-829A, and 388-829C WAC. Following is a complete list of WAC sections to be amended or added through this proposed rule making.

RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on April 22, 2014.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by April 1, 2014, TTY (360) 664-6178 or (360) 664-6094 or by e-mail jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose for these amendments are to consolidate background check rules and implement uniform criminal history standards between the aging and long-term support administration (ALTSA) and the developmental disabilities administration (DDA), which frequently use the same settings and provider pool.

The proposed amendments to this chapter include: Aligning disqualifying criminal history standards with the ALTSA; moving all DDA background check related rules from the background check central unit (BCCU) into DDA program WAC; and creating grandfathering language for workers hired and qualified prior to implementation of new standards, for all but the most egregious crimes.

Reasons Supporting Proposal: The consolidation and standardization of background check rules across the ALTSA and DDA will result in clarity of rules, efficiency in checks, reduced training needs, improved compliance and will significantly reduce the number of duplicate background checks conducted by affected business across the state.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.120.

Statute Being Implemented: RCW 43.43.832, 43.43.837, 74.18.123.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Shaw Seaman, DDA, P.O. Box 45310, Olympia, 98504-5310, (360) 725-3443.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

SUMMARY OF PROPOSED RULES: The department of social and health services' developmental disabilities administration (DDA) is proposing amendments to chapter 388-825 WAC, Developmental disabilities services rules; chapter 388-829A WAC, Alternative living; and chapter 388-829C WAC, Companion homes.

The purpose of this chapter is to: Consolidate background check rules and implement uniform criminal history standards between ALTSA and DDA, which frequently use the same settings and provider pool.

The proposed amendments to this chapter include:

(1) Aligning disqualifying criminal history standards with ALTSA.

(2) Moving all DDA background check related rules from the BCCU into DDA program WAC chapters.

(3) Creating grandfathering language for workers hired and qualified prior to implementation of new standards, for all but the most egregious crimes.

SMALL BUSINESS ECONOMIC IMPACT STATEMENT—DETERMINATION OF NEED: Chapter 19.85 RCW, the Regulatory Fairness Act, requires that the economic impact of proposed regulations be analyzed in relation to small businesses. The WAC chapter changes related to background check consolidation will not have a disproportionate economic impact on small businesses. The department has thoroughly reviewed background check inefficiencies in place with current rules, as written including:

(1) Duplicate background check requirements for same staff person, driven by current rules.

(2) Conflicting rules in place for same provider/same setting serving clients from two divisions (e.g. home and community services (HCS) and DDA[]).

(3) Poor compliance with program rules due to background check complexity, and varying standards.

(4) Negative fiscal and workload impact on both small and large business resulting from regulatory work, contradictory standards, duplicate background check requirements and training needs.

The consolidation and standardization of background check rules across the ALTSA and DDA administration will result in clarity of rules, efficiency in checks, reduced training needs, improved compliance and will significantly reduce the number of duplicate background checks conducted by affected businesses across the state.

INDUSTRY ANALYSIS: These proposed rules impact all small businesses contracted to provide direct service to clients of DDA including: Certified residential providers (approximately two hundred businesses); companion homes (approximately sixty); alternative living providers (approximately one hundred fifty); adult family homes (approximately six hundred used by DDA clients).

The majority of these businesses meet the definition of small business defined in RCW 19.85.020. Again, DDA has concluded any negative impact to any specific small business would be negligible and the impact on the industry as a whole will be fiscally positive, while improving the health and safety of vulnerable populations served by two administrations.

INVOLVEMENT OF SMALL BUSINESSES: These rule changes were driven, in part, by demand from businesses. Working drafts have also been shared with stakeholders (including certified residential providers, AFHs and unions), both in person and electronically. Stakeholder input is reflected in the proposed rules.

COST OF COMPLIANCE: Under chapter 19.85 RCW, DDA has considered annual costs to small businesses and concluded there will be no impact of fifty dollars or more per caregiver.

General Costs: DDA analysis revealed that there are no significant costs imposed by the proposed amendments.

Disproportionate Economic Impact Analysis: None.

Mitigating Costs: Not applicable.

Benefits for Proposed Rules: See above.

JOBS CREATED OR LOST: Not applicable.

CONCLUSION: DDA has given careful consideration to the impact of proposed rules in chapter 388-825 WAC, Developmental disabilities services rules; chapter 388-829A WAC, Alternative living; and chapter 388-829C WAC, Com-

panion homes on small businesses. To comply with the Regulatory Fairness Act, chapter 19.85 RCW, DDA has analyzed impacts on small businesses and proposed ways to mitigate costs considered more than minor and disproportionate, however, no significant costs were identified.

Please contact Shaw Sherman if you have any questions at (360) 259-4417.

A copy of the statement may be obtained by contacting Alan McMullen, DDA, P.O. Box 45310, Olympia, WA 98504-5310, phone (360) 725-3524, fax (360) 407-0955, mcmular@dshs.wa.gov.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Alan McMullen, DDA, P.O. Box 45310, Olympia, WA 98504-5310, phone (360) 725-3524, fax (360) 407-0955, mcmular@dshs.wa.gov.

February 13, 2014
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-17-135, filed 8/19/05, effective 9/19/05)

WAC 388-825-335 Is a background check required of a long-term care worker employed by a home care agency ((provider)) licensed by the department of health?
In order to be a long-term care worker employed by a home care agency ((provider)), a person must:

(1) ((complete)) Complete the ((department's criminal conviction background inquiry application, which is submitted by the agency to the department. This includes an FBI fingerprint based background check if the home care agency provider has lived in the state of Washington less than three years)) required DSHS form authorizing a background check.

(2) Disclose any disqualifying criminal convictions and pending charges as listed in chapter 388-113 WAC, and also disclose civil adjudication proceedings and negative actions as those terms are defined in WAC 388-71-0512.

(3) Effective January 8, 2012, be screened through Washington state's name and date of birth background check. Preliminary results may require a thumb print for identification purposes

(4) Effective January 8, 2012, be screened through the Washington state and national fingerprint-based background check, as required by RVW 74.39A.056.

(5) Results of background checks are provided to the department and the employer or potential employer for the purpose of determining whether the person:

(a) Is disqualified based on a disqualifying criminal conviction or a pending charge for a disqualifying crime as listed in 388-113-0020, civil adjudication proceeding, or negative action as defined in 388-71-0512 and listed in 388-71-0540; or

(b) Should or should not be employed based on his or her character, competence, and/or suitability.

(6) For those providers listed in RCW 43.43.837(1), a second national fingerprint-based background check is required if they have lived out of the state of Washington

since the first national fingerprint-based background check was completed.

(7) The department may require a long-term care worker to have a Washington state name and date of birth background check or a Washington state and national fingerprint-based background check, or both, at any time.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 10-02-101, filed 1/6/10, effective 2/6/10)

WAC 388-825-375 When will the department deny payment for services of an individual or home care agency providing respite care, attendant care, or personal care services? (1) The department will deny payment for the services of an individual or home care agency providing respite care, attendant care, or personal care who:

(a) Is the client's spouse, per 42 C.F.R. 441.360(g), except in the case of an individual provider for a chore services client. Note: For chore spousal providers, the department pays a rate not to exceed the amount of a one-person standard for a continuing general assistance grant((, per WAC 388-478-0030));

(b) Is providing services under this chapter to their natural/step/adoptive minor client aged seventeen or younger;

(c) Has been convicted of ((a)), or has a pending charge that is a disqualifying crime, under ((RCW 43.43.830 and 43.43.842 or of a crime relating to drugs as defined in RCW 43.43.830)) chapter 388-113 WAC;

(d) Has ((abused, neglected, abandoned, or exploited a minor or vulnerable adult, as defined in chapter 74.34 RCW;

(e) Has had a license, certification, or a contract for the care of children or vulnerable adults denied, suspended, revoked, or terminated for noncompliance with state and/or federal regulations)) been subject to a negative action described in WAC 388-825-0640;

((f)) (e) Does not successfully complete the training requirements within the time limits required in chapter 388-71 WAC ((388-71-05665 through 388-71-05909)); or

((g)) (f) Is terminated by the client (in the case of an individual provider) or by the home care agency (in the case of an agency provider).

(2) In addition, the department may deny payment to or terminate the contract of an individual provider as provided under WAC 388-825-380((,)) and 388-825-385 ((and 388-825-390)).

Reviser's note: The unnecessary underscoring in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 05-17-135, filed 8/19/05, effective 9/19/05)

WAC 388-825-380 When ((ear)) may the department reject the client's choice of an individual respite care, attendant care or personal care provider? The department may reject a client's request to have a family member or other person serve as his or her individual respite

care, attendant care or personal care provider if the case manager has a reasonable, good faith belief that the person will be unable to appropriately meet the client's needs. Examples of circumstances indicating an inability to meet the client's needs could include, without limitation:

- (1) Evidence of alcohol or drug abuse;
- (2) Evidence of a conviction, pending charge, or negative action described in WAC 388-825-0640.
- (3) A reported history of domestic violence, no-contact orders, or criminal conduct (whether or not the conduct is automatically disqualifying under RCW 43.43.830 ((and)) 43.43.842 or chapter 388-113 WAC);
- ((4)) (4) A report from the client's health care provider or other knowledgeable person that the requested provider lacks the ability or willingness to provide adequate care;
- ((4)) (5) Other employment or responsibilities that prevent or interfere with the provision of required services;
- ((5)) (6) Excessive commuting distance that would make it impractical to provide services as they are needed and outlined in the client's service plan.

AMENDATORY SECTION (Amending WSR 07-23-062, filed 11/16/07, effective 12/17/07)

WAC 388-825-385 When ((can)) may the department terminate ((or summarily suspend)) an individual respite care, attendant care, or personal care provider's contract? The department may take action to terminate an individual respite care, attendant care, or personal care provider's contract if the provider's inadequate performance or inability to deliver quality care is jeopardizing the client's health, safety, or well-being. ((The department may summarily or immediately suspend the contract pending a hearing based on a reasonable, good faith belief that the client's health, safety, or well-being is in imminent jeopardy.)) Examples of circumstances indicating jeopardy to the client could include, without limitation:

- (1) ((Domestic violence or abuse, neglect, abandonment, or exploitation of a minor or vulnerable adult)) Evidence of a conviction, pending charges, or negative actions described in WAC 388-825-0640;
- (2) Using or being under the influence of alcohol or illegal drugs during working hours;
- (3) Other behavior directed toward the client or other persons involved in the client's life that places the client at risk of harm;
- (4) A report from the client's health care provider that the client's health is negatively affected by inadequate care;
- (5) A complaint from the client or client's representative that the client is not receiving adequate care;
- (6) The absence of essential interventions identified in the service plan, such as medications or medical supplies; and/or
- (7) Failure to respond appropriately to emergencies.
- (8) The department, AAA or department designee may also terminate an individual provider's contract for reasons described under WAC 388-71-0551.

Developmental Disabilities Administration Background Check Requirements

NEW SECTION

WAC 388-825-0600 What definitions apply to WAC 388-825-0600 through 388-825-0690 of this chapter? The following definitions apply to WAC ((388-06-0100)) 388-825-0600 through ((388-06-0260)) 388-825-0690 of this chapter:

"Agency" means any agency of the state or any private agency providing services to individuals with developmental disabilities.

"Authorized" or **"authorization"** means not disqualified by the department to have unsupervised access to children and individuals with a developmental disability. This includes persons who are certified or contracted by the department, allowed to receive payments from department funded programs, or who volunteer with department funded programs.

"Background check central unit (BCCU)" means the DSHS program responsible for conducting background checks for DSHS administrations.

"Certification" means department approval of an entity that does not legally need to be licensed indicating that the entity nevertheless meets minimum licensing requirements.

"Civil adjudication proceeding" is a judicial or administrative adjudicative proceeding that results in a finding of, or upholds an agency finding of, domestic violence, abuse, sexual abuse, neglect, abandonment, violation of a professional licensing standard regarding a child or vulnerable adult, or exploitation or financial exploitation of a child or vulnerable adult under any provision of law, including but not limited to chapter 13.34, 26.44 or 74.34 RCW, or rules adopted under chapters 18.51 and 74.42 RCW. "Civil adjudication proceeding" also includes judicial or administrative findings that become final due to the failure of the alleged perpetrator to timely exercise a legal right to administratively challenge such findings.

"Community residential service businesses" include all division of developmental disabilities supported living providers with the exception of supported living providers who are also licensed as an assisted living facility or adult family home provider. Community residential service providers also include DDA companion homes, DDA alternative living and licensed residential homes for children.

"DDA" means the developmental disabilities administration within the department of social and health services (DSHS).

"Department" means the department of social and health services (DSHS).

"Disqualified" means that the results of an individual's background check disqualifies him or her from a position which will or may involve unsupervised access to individuals with developmental disabilities.

"Entity" means, but is not limited to, a licensed facility, a corporation, a partnership, a sole proprietorship, or a contracted or certified service provider.

"Hire" means engagement by an agency, entity or a hiring individual to perform specific agreed duties as a paid

employee, a contract employee, a volunteer, or a student intern.

"Individual provider" has the same meaning as defined in RCW 74.39A.240.

"Individuals with a developmental disability" means individuals who meet eligibility requirements in Title 71A RCW as further defined in chapter 388-823 WAC.

"Long-term care worker" has the same meaning as defined in RCW 74.39A.009.

"Qualified" means an individual can be hired into a position that includes unsupervised access to individuals with developmental disabilities because the results of his or her background check are not disqualifying.

"Permanent Restraining Order" means a restraining order/order of protection issued either following a hearing, or by stipulation of the parties. A "permanent" order may be in force for a specific time period (e.g. 1 year), after which it expires.

"Temporary Restraining Order" means restraining order/order of protection that expired without a hearing, was dismissed following an initial hearing, or was dismissed by stipulation of the parties in lieu of an initial hearing."

"Unsupervised" means not in the presence of:

(1) The licensee, another employee or volunteer from the same business or organization as the applicant who has not been disqualified by the background check.

(2) Any relative or guardian of the individual with a developmental disability to whom the applicant has access during the course of his or her employment or involvement with the business or organization (RCW 43.43.080(9)).

"We" refers to the department, including licensors and social workers.

"WSP" refers to the Washington state patrol.

Reviser's note: The unnecessary underscoring and strikethrough in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 388-825-0605 Why are background checks done? The department requires background checks to be run to help safeguard the health, safety and well-being of individuals with a developmental disability.

NEW SECTION

WAC 388-825-0610 Who must have a Washington State and/or federal background check? (1) DDA requires background checks on all contracted providers, individual providers, employees of contracted providers, and any other individual who needs to be qualified by DDA to have unsupervised access to individuals with developmental disabilities.

(2) Long-term care workers as defined in chapter 74.39A RCW hired after January 7, 2012 are subject to national fingerprint-based background checks.

NEW SECTION

WAC 388-825-0615 What is the process for obtaining a background check? (1) Long-term care workers,

including individual providers, undergoing a background check for initial hire or initial contract, after January 7, 2012, will be screened through a state name and date of birth check and a national fingerprint-based background check; except that long-term care workers in community residential service businesses are subject to background checks as described in WAC 388-825-0615 (a) and (b). Parents are not exempt from the long-term care background check requirements.

(a) Prior to January 1, 2016 community residential service businesses as defined above will be screened as follows:

(i) Individuals who have continuously resided in Washington state for the past three consecutive years will be screened through a state name and date of birth background check.

(ii) Individuals who have resided outside of Washington state within the past three years will be screened through a state name and date of birth and a national fingerprint-based background check.

(b) Beginning January 1, 2016 community residential service businesses as defined above will be screened as described in WAC 388-825-0615(1).

(2) For adult family homes refer to chapter 388-76 WAC, adult family home minimum licensing requirements. For assisted living facilities refer to chapter 388-78A WAC, assisted living licensing rules.

NEW SECTION

WAC 388-825-0620 Who must have background check renewals? (1) DDA requires rechecks for all DDA contracted providers and their employees at least every three years or more frequently if required by program rule. Rechecks will be conducted as follows:

(a) Individuals who have continuously resided in Washington State for the past three consecutive years will be screened through a state name and date of birth background check.

(b) Individuals who have lived outside of Washington state within the past three years will be screened through a state name and date of birth check and a national fingerprint-based background check.

NEW SECTION

WAC 388-825-0625 What happens if I don't comply with the background check requirement? The department will deny, suspend or revoke your license, contract, certification, or authorization to care for individuals with a developmental disability, if you or someone working within your program who has unsupervised access does not comply with the department's requirement for a background check.

NEW SECTION

WAC 388-825-0630 What does the background check cover? (1) The department must review criminal convictions and pending charges based on identifying information provided by you. The background check may include but is not limited to the following information sources:

(a) Washington state patrol.

(b) Washington courts.

- (c) Department of corrections.
- (d) Department of health.
- (e) Civil adjudication proceedings.
- (f) Applicant's self-disclosure.
- (g) Out-of-state law enforcement and court records.

(2) DDA requires fingerprint-based background checks as described in WAC 388-825-0615. These background checks include a review of conviction records through the Washington state patrol, the Federal Bureau of Investigation, and the national sex offender registry.

NEW SECTION

WAC 388-825-0635 Who pays for the background check? DDA pays for background checks, including fingerprint-based background checks, for individuals seeking authorization to provide services to clients of DDA.

NEW SECTION

WAC 388-825-0640 What criminal convictions, pending crimes or negative actions will prohibit me from being contracted or authorized to work in a capacity that may involve unsupervised access to individuals with a developmental disability? (1) The list of disqualifying crimes recognized by the developmental disabilities administration and the aging and long-term support administration can be found in chapter 388-113 WAC.

(2) The following negative actions will automatically disqualify an individual from having unsupervised access to individuals with a developmental disability:

- (a) A final finding of abuse, neglect, financial exploitation or abandonment of a vulnerable adult, unless the finding was made by Adult Protective Services prior to October, 2003.
- (b) A final finding of abuse or neglect by child protective services, unless the finding was made prior to October 1, 1998.
- (c) A court ordered permanent restraining order/order of protection, either active or expired, against the individual that was based upon abuse, neglect, financial exploitation, or mistreatment of a child or vulnerable adult.
- (d) Registered sex offender status.

NEW SECTION

WAC 388-825-0645 May an individual work in an unsupervised capacity with individuals with developmental disabilities when their background check reveals a crime or negative action that is not considered disqualifying per chapter 388-113 WAC or WAC 388-825-0640? An individual with crimes or negative actions that are not disqualifying per chapter 388-113 WAC or WAC 388-825-0640 may work in an unsupervised capacity with individuals with developmental disabilities only when a character, competence and suitability review has been conducted.

NEW SECTION

WAC 388-825-0650 What does a character, competence and suitability review include? The contractor, entity,

or hiring authority must review an individual's background to determine character, competence and suitability to have unsupervised access to individuals with a developmental disability. In this review, the contractor, entity or hiring authority must consider the following factors:

- (a) The amount of time that has passed since you were convicted or were subject to a negative action;
- (b) The seriousness of the crime or action that led to the conviction or finding;
- (c) The number and types of other convictions in your background;
- (d) Your age at the time of conviction;
- (e) Documentation indicating you have successfully completed all court-ordered programs and restitution;
- (f) Your behavior since the conviction; and
- (g) The vulnerability of those that would be under your care.

NEW SECTION

WAC 388-825-0655 How will I know if I have been disqualified by the background check? (1) The department will notify you, and the care provider, the employer, or the licensor if you have been disqualified by the background check. The notice will be in writing and will include any laws and rules that require disqualification.

(2) If the department sends you a notice of disqualification, you will not receive a license, contract, certification, or be authorized to have unsupervised access to individuals with a developmental disability.

NEW SECTION

WAC 388-825-0660 May I appeal the department's decision to deny me a contract or authorization based on the results of the background check? (1) Prospective volunteers, interns, contractors, or those seeking certification do not have the right to appeal the department's decision to deny authorization for unsupervised access to individuals with a developmental disability.

(2) The employer or prospective employer cannot contest the department's decision on your behalf.

NEW SECTION

WAC 388-825-0665 Is the background check information released to my employer or prospective employer? The department will release the source of the disqualifying crime or negative action and WSP rap sheet to authorized requesters as allowed by state law. The department will follow laws related to the release of criminal history records (chapters 10.97 and 43.43 RCW) and public disclosure (chapter 42.17 RCW) when releasing any information.

NEW SECTION

WAC 388-825-0670 May I receive a copy of my criminal background check results? (1) The department will provide you a copy of your criminal background check results if you:

- (a) Make the request in writing to the department; and
- (b) Offer proof of identity, such as picture identification.

(2) A copy of your WSP criminal background check results may also be obtained from the Washington state patrol (chapter 10.97 RCW).

NEW SECTION

WAC 388-825-0675 What is the purpose of the one hundred twenty-day provisional hire? The one hundred twenty-day provisional hire allows an employee or contractor to have unsupervised access to individuals with a developmental disability on a provisional basis pending the results of their Federal Bureau of Investigation (FBI) background check.

NEW SECTION

WAC 388-825-0680 Who is responsible for approving the one hundred twenty-day provisional hire? The agency, entity or hiring individual is responsible for approving individuals for the one hundred twenty-day provisional hire.

NEW SECTION

WAC 388-825-0685 When are individuals eligible for the one hundred twenty-day provisional hire? All DDA service providers working in an unsupervised capacity, including long-term care workers as defined in chapter 74.39A RCW, are eligible for the one hundred twenty-day provisional hire, pending the outcome of the fingerprint-based background check, as long as the worker is not disqualified as a result of the initial name and date of birth background check.

NEW SECTION

WAC 388-825-0690 When does the one hundred twenty-day provisional hire begin? The one hundred twenty-day provisional hire may begin from either:

- (1) The date of hire of an individual; or
- (2) After completion of a state background check on an individual.

The agency, entity, or hiring individual makes this decision.

AMENDATORY SECTION (Amending WSR 07-16-101, filed 7/31/07, effective 9/1/07)

WAC 388-829A-290 When may ((DDA)) DDA ((not)) decline to authorize payment or terminate a contract for alternative living services? ((DDA)) DDA may not authorize payment or may terminate a contract for the services of an alternative living provider, when that provider:

- (1) Is no longer the client's ((choice of)) provider of choice.
- (2) Demonstrates inadequate performance or inability to deliver quality care which is jeopardizing the client's health, safety, or well-being. ((DDA)) DDA may terminate the con-

tract based on a reasonable, good faith belief that the client's health, safety, or well-being is in imminent jeopardy.

(3) Is unable to clear a background check required by RCW 43.20A.710.

(4) Has been convicted of ((a)), or has a pending crime that is disqualifying ((crime)) under ((RCW 43.43.830 and 43.43.842 or of a crime relating to drugs as defined in RCW 43.43.830)) chapter 388-113 WAC.

(5) Has ((abused, neglected, abandoned, or exploited a minor or vulnerable adult, as defined in chapter 74.34 RCW)) been subject to a negative action described in WAC 388-825-0640.

(6) ((Has had a license, certification, or a contract for the care of children or vulnerable adults denied, suspended, revoked, or terminated for noncompliance with state and/or federal regulations.

((7))) Does not successfully complete the training requirements within the time limits required in this chapter.

((8))) (7) Does not complete the corrective action within the agreed upon time frame.

((9))) (8) Fails to comply with the requirements of this chapter, or the ((DDA)) DDA alternative living contract.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 07-16-101, filed 7/31/07, effective 9/1/07)

WAC 388-829A-300 When must ((DDA)) DDA deny the client's choice of an alternative living provider? ((DDA)) DDA must deny a client's request to have a certain provider and must not enter into a contract with the person when any of the following exist:

(1) The person is the client's spouse, under 42 C.F.R. 441.360(g).

(2) The person is the client's natural/step/adoptive parent.

(3) The person is the client's court-appointed legal representative.

(4) ((DDA)) DDA has a reasonable, good faith belief that the provider will be unable to meet the client's needs. Examples of a provider's inability to meet the client's needs may include:

(a) Evidence of alcohol or drug abuse;

(b) A reported history of domestic violence, no-contact orders, or criminal conduct (whether or not the conduct is disqualifying under ((RCW 43.43.830 and 43.43.842)) chapter 388-113 WAC);

(c) A report from the client's health care provider or another knowledgeable person that the requested provider lacks the ability or willingness to provide adequate support;

(d) Other employment or responsibilities that prevent or interfere with the provision of required services;

(e) A reported history of mismanagement of client funds or DSHS contract violations; or

(f) Excessive commuting distance that would make it impractical to provide services as they are needed and outlined in the client's ISP.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-460 When may ((DDD)) DDA stop the authorization for payment or terminate a contract for companion home services? ((DDD)) DDA may stop the authorization for payment or terminate a contract for the services of a companion home provider, when that provider:

(1) Is no longer the client's choice of provider.

(2) Demonstrates inadequate performance or inability to deliver quality care which is jeopardizing the client's health, safety, or well-being. DDD may terminate the contract based on a reasonable, good faith belief that the client's health, safety, or well-being is in imminent jeopardy.

(3) Is unable to clear a background check or other individuals living in the companion home are unable to clear a background check required by RCW 43.20A.710.

(4) Has been convicted of ((a)) or has a pending crime that is disqualifying ((crime)) under ((RCW 43.43.830 and 43.43.842 or of a crime relating to drugs as defined in RCW 43.43.830)) chapter 388-113 WAC.

(5) Has ((abused, neglected, abandoned, or exploited a minor or vulnerable adult, as defined in chapter 74.34 RCW.))

((6) Has had a license, certification, or a contract for the care of children or vulnerable adults denied, suspended, revoked, or terminated for noncompliance with state and/or federal regulations)) been subject to a negative action described in WAC 388-825-0640.

((7)) (6) Does not successfully complete the training requirements within the time limits required in this chapter.

((8)) (7) Does not complete the corrective actions within the agreed upon time frame.

((9)) (8) Fails to comply with the requirements of this chapter or the companion home contract.

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-470 When may ((DDD)) DDA deny the client's choice of a companion home provider? ((DDD)) DDA must deny a client's request to have a certain provider and must not enter into a contract with the person when any of the following exist:

(1) The person is the client's spouse, under 42 C.F.R. 441.360(g).

(2) The person is the client's natural/step/adoptive parent.

(3) The person is the client's court-appointed legal representative, unless the provider was contracted and paid to provide companion home services before February 2005.

(4) ((DDD)) DDA has a reasonable, good faith belief that the provider will be unable to meet the client's needs. Examples of a provider's inability to meet the client's needs may include:

(a) Evidence of alcohol or drug abuse;

(b) Evidence of a conviction, pending charges, or negative actions described in WAC 388-825-0640.

(c) A reported history of domestic violence, no-contact orders, or criminal conduct (whether or not the conduct is disqualifying under RCW 43.43.830 ((and)) 43.43.842, or chapter 388-113 WAC);

((e)) (d) A report from the client's health care provider or another knowledgeable person that the requested provider lacks the ability or willingness to provide adequate support;

((f)) (e) Other employment or responsibilities that prevent or interfere with the provision of required services; or

((e)) (f) A reported history of mismanagement of client funds or DSHS contract violations.

WSR 14-05-072
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Aging and Long-Term Support Administration)

[Filed February 18, 2014, 10:37 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-15-174.

Title of Rule and Other Identifying Information: The department is adding new sections and amending the following sections in chapter 388-78A WAC, Assisted living facilities: WAC 388-78A-2020, 388-78A-2462 Background checks—Who is required to have, 388-78A-24641 Background checks—Washington state name and date of birth background check, 388-78A-2464 Process—Background authorization form, 388-78A-24642 Background checks—National fingerprint background check, 388-78A-2465 Background check—Results—Inform, 388-78A-2467 Background check—Sharing by health care facilities, 388-78A-2468 Background checks—Employment—Conditional hire—Pending results of Washington state name and date of birth background check, 388-78A-2469 Background check—Disclosure statement, 388-78A-2470 Background check—Employment-disqualifying information, 388-78A-24701 Background checks—Employment—Nondisqualifying information, 388-78A-3170 Circumstances resulting in enforcement remedies, and 388-78A-3190 Denial, suspension, revocation, or nonrenewal of license statutorily required.

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), on April 22, 2014, at 10:00 a.m.

Date of Intended Adoption: Not earlier than April 23, 2014.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAU RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on April 22, 2014.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by April 1, 2014, TTY (360) 664-6178 or (360) 664-6094 or by e-mail jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending these rules to support the health and safety of residents living in residential setting, to consolidate various secretary's lists in aging and long-term support administration (ALTSA) thus providing a uniform background check standard for all caregivers and to reduce the overall costs of processing background checks.

In chapter 388-78A WAC, the disqualifying criminal convictions have been moved to a new WAC chapter, with pending charges added. This requires the amending of the assisted living facility rules to remove the disqualifying crimes from each applicable section, amend the language to support the reference to the new WAC chapter, and to clarify amendments to the negative actions.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.39A.056, chapter 18.20 RCW.

Statute Being Implemented: RCW 74.39A.056, chapter 18.20 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Jeanette K. Childress, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2591; Implementation and Enforcement: Lori Melchiori, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2404.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

SUMMARY OF PROPOSED RULES: The department of social and health services' ALTSA is proposing amendments to chapter 388-101 WAC, Certified community residential care services; chapter 388-78A WAC, Assisted living facilities; chapter 388-76 WAC, Adult family homes; and chapter 388-97 WAC, Nursing homes.

The purpose of this chapter is to: The department is amending these rules to support: (1) The health and safety of residents living in residential settings, (2) the consolidation of various secretary's lists in ALTSA into a new WAC chapter that provides a uniform background check standard for all caregivers, and (3) the reduction of overall costs to process background checks.

The disqualifying criminal convictions have been moved to a new WAC chapter, with pending charges added. This requires the amending of the residential care services' (RCS) WACs to remove the disqualifying crimes from each applicable section, amend the language to support the reference to the new WAC chapter, and to clarify amendments to the negative actions. This will result in increased clarity and decreased confusion for providers.

The proposed amendments to these chapters include:

(1) Aligning disqualifying criminal history standards with ALTSA.

(2) The disqualifying criminal convictions have been moved to a new WAC chapter, with pending charges added. This requires amending residential care facilities' WACs to

remove the disqualifying crimes from each applicable section, amend the language to support the reference to the new WAC chapter, and to clarify amendments to the negative actions.

(3) Creating grandfathering language for workers hired and qualified prior to implementation of new standards, for all but the most egregious crimes.

SMALL BUSINESS ECONOMIC IMPACT STATEMENT—DETERMINATION OF NEED: Chapter 19.85 RCW, the Regulatory Fairness Act, requires that the economic impact of proposed regulations be analyzed in relation to small businesses. The WAC chapter changes related to background check consolidation will not have a disproportionate economic impact on small businesses. The department has thoroughly reviewed background check inefficiencies in place with current rules, as written including:

(1) Duplicate background check requirements for same staff person, driven by current rules.

(2) Conflicting rules in place for same provider/same setting serving clients from two divisions (e.g. home and community services and DDA).

(3) Poor compliance with program rules due to background check complexity, varying standards, and provider confusion.

(4) Negative fiscal and workload impact on both small and large business resulting from regulatory work, contradictory standards, duplicate background check requirements and training needs.

The consolidation and standardization of background check rules across the ALTSA and DDA administrations will result in clarity of rules, efficiency in checks, reduced training needs, improved compliance and will significantly reduce the number of duplicate background checks conducted by affected businesses across the state.

INDUSTRY ANALYSIS: These proposed rules impact all small businesses contracted to provide direct service to clients of RCS including: Certified community residential care services (CCRCS) (approximately one hundred fifty-three providers); adult family homes (AFH) (approximately two thousand seven hundred fifty); assisted living facilities (ALF) (approximately five hundred thirty facilities); and nursing homes (NH) (approximately two hundred thirty).

The majority of these businesses meet the definition of small business defined in RCW 19.85.020. Again, RCS has concluded any negative impact to any specific small business would be negligible and the impact on the industry as a whole will be fiscally positive, while improving the health and safety of vulnerable populations served by two administrations.

INVOLVEMENT OF SMALL BUSINESSES: These rule changes were driven, in part, by demand from businesses. Working drafts have also been shared with stakeholders including CCRCSs, ALFs, NHs, AFHs and associations, both in person and electronically. Stakeholder input is reflected in the proposed rules.

COST OF COMPLIANCE: Under chapter 19.85 RCW, DDA and ALTSA has considered annual costs to small businesses and concluded there will be no impact of fifty dollars or more per caregiver.

General Costs: RCS analysis revealed that there are no significant costs imposed by the proposed amendments.

Disproportionate Economic Impact Analysis: None.

Mitigating Costs: Not applicable.

Benefits for Proposed Rules: See above.

JOBS CREATED OR LOST: Not applicable.

CONCLUSION: RCS has given careful consideration to the impact of proposed rules in chapter 388-101 WAC, Certified community residential care services; chapter 388-78A WAC, Assisted living facilities; chapter 388-76 WAC, Adult family homes; and chapter 388-97 WAC, Nursing homes[,] on small businesses. To comply with the Regulatory Fairness Act, chapter 19.85 RCW, RCS has analyzed impacts on small businesses and proposed ways to mitigate costs considered more than minor and disproportionate, however, no significant costs were identified.

RCS has concluded that the intent of these rule-making changes are to improve the health and safety of vulnerable populations served by ALTSA.

Please contact Jeanette K. Childress if you have any questions at (360) 725-2591.

A copy of the statement may be obtained by contacting Jeanette Childress, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-2591, e-mail Jeanette.childress@dshs.wa.gov.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Jeanette Childress, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-2591, e-mail Jeanette.childress@dshs.wa.gov.

February 12, 2014
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-24641 Background checks—Washington state name and date of birth background check. ~~((H)) Unless the individual is eligible for an exception under WAC 388-113-0040, if the results of the Washington state name and date of birth background check indicate the person ((is disqualified by having)) has a disqualifying criminal conviction ((listed in WAC 388-78A-2470 subsections (1) through (6),)) or ((by having)) a ((finding listed in)) pending charge for a disqualifying crime under chapter 388-113 WAC, or a disqualifying negative action under WAC 388-78A-2470 ((subsections (7) through (9))), then the assisted living facility must:~~

(1) Not employ, directly or by contract, a caregiver, administrator, or staff person; and

(2) Not allow a volunteer or student to have unsupervised access to residents.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2464 Background checks—Process—Background authorization form. Before the assisted living

facility employs, directly or by contract, an administrator, staff person or caregiver, or accepts any volunteer, or student, the home must:

(1) Require the person to complete a DSHS background authorization form; and

(2) ~~((Send the completed form))~~ Submit to the department's background check central unit, including any additional documentation and information requested by the department.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-24642 Background checks—National fingerprint background check. (1) Administrators and all caregivers who are hired after January 7, 2012 and are not disqualified by the Washington state name and date of birth background check, must complete a national fingerprint background check and follow department procedures.

(2) After receiving the results of the national fingerprint background check the assisted living facility must not employ, directly or by contract, an administrator or caregiver who has ~~((been convicted of))~~ a ~~((crime or has a finding that is))~~ disqualifying criminal conviction or pending charge for a disqualifying crime under chapter 388-113 WAC, or that is disqualifying under WAC 388-78A-2470.

(3) The assisted living facility may accept a copy of the national fingerprint background check results letter and any additional information from the department's background check central unit from an individual who previously completed a national fingerprint check through the department's background check central unit, provided the national fingerprint background check was completed after January 7, 2012.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2465 Background check—Results—Inform.

(1) After receiving the results of the Washington state name and date of birth background check, the assisted living facility must:

(a) Inform the person of the results of the background check;

(b) Inform the person that they may request a copy of the results of the background check. If requested, a copy of the background check results must be provided within ten days of the request; and

(c) Notify the department and other appropriate licensing or certification agency of any person resigning or terminated as a result of having a disqualifying criminal conviction ~~((record)) or pending charge for a disqualifying crime under chapter 388-113 WAC, or a negative action that is disqualifying under~~ WAC 388-78A-2470.

(2) After receiving the result letter for the national fingerprint background check, the assisted living facility must inform the person:

(a) Of the national fingerprint background check result letter;

(b) That they may request a copy of the national fingerprint check result letter; and

(c) That any additional information requested can only be obtained from the department's background check central unit.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2467 Background check—Sharing by health care facilities. In accordance with RCW 43.43.832 a health care facility may share Washington state background check results with other health care facilities under certain circumstances. Results of the national fingerprint checks may not be shared. For the purposes of this section health care facility means a nursing home licensed under chapter 18.51 RCW, an assisted living facility license under chapter 18.20 RCW, or an adult family home licensed under chapter 70.128 RCW.

(1) The health care facility may, upon request from another health care facility, share completed Washington state background check results only if:

(a) The health care facility sharing the background check information is reasonably known to be the person's most recent employer;

(b) No more than twelve months has elapsed between the date the individual was last employed at a licensed health care facility and the date of the individual's current employment application;

(c) The background check is no more than two years old; and

(d) The assisted living facility has no reason to believe the individual has ((or may have)) a disqualifying criminal conviction or ((finding as described in)) pending charge for a disqualifying crime under chapter 388-113 WAC, a negative action that is disqualifying under WAC 388-78A-2470.

(2) The assisted living facility may also establish, maintain and follow a written agreement with home health, hospice, or home care agencies licensed under chapter 70.127 RCW or nursing pools registered under chapter 18.52C RCW in order to ensure that the agency or pool staff meet the requirements of WAC 388-78A-2470.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2468 Background checks—Employment—Conditional hire—Pending results of Washington state name and date of birth background check. The assisted living facility may conditionally hire an administrator, caregiver, or staff person directly or by contract, pending the result of the Washington state name and date of birth background check, provided that the assisted living facility:

(1) Submits the background authorization form for the person to the department no later than one business day after he or she starts working;

(2) Requires the person to sign a disclosure statement indicating if ((they have been convicted of)) he or she has a disqualifying criminal conviction or pending charge for a dis-

qualifying crime ((or have a finding that is disqualifying)) under chapter 388-113 WAC, or a negative action that is disqualifying under WAC 388-78A-2470;

(3) Has received three positive references for the person;

(4) Does not allow the person to have unsupervised access to any resident;

(5) Ensures direct supervision of the administrator, all caregivers, and staff persons; and

(6) Ensures that the person is competent, and receives the necessary training to perform assigned tasks and meets the training requirements under chapter 388-112 WAC.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2469 Background check—Disclosure statement. (1) The assisted living facility must require each administrator, caregiver, staff person, volunteer and student, prior to starting his or her duties, to make disclosures of any crimes or findings consistent with RCW 43.43.834(2). The disclosures must be in writing and signed by the person under penalty of perjury.

(2) The department may require the assisted living facility or any administrator, caregiver, staff person, volunteer or student to complete additional disclosure statements or background authorization forms if the department has reason to believe that ((offenses specified in)) a disqualifying criminal conviction or pending charge for a disqualifying crime under chapter 388-113 WAC, or a negative action that is disqualifying under WAC 388-78A-2470 have occurred since completion of the previous disclosure statement or background check.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2470 Background check—Employment-disqualifying information—Disqualifying negative actions. (1) The assisted living facility must not employ ((or allow)) an administrator, caregiver, or staff person, to have unsupervised access to residents, as defined in RCW 43.43.830, if ((the person has been:))

((1) Convicted of a "crime against children or other persons")) the individual has a disqualifying criminal conviction or pending charge for a disqualifying crime under chapter 388-113 WAC, unless the individual is eligible for an exception under WAC 388-113-0040.

(2) The assisted living facility must not employ an administrator, caregiver, or staff person, or allow an administrator, caregiver, or staff person to have unsupervised access to residents, as defined in RCW 43.43.830, ((unless the crime is simple assault, assault in the fourth degree, or prostitution and more than three years have passed since the last conviction;))

(2) Convicted of "crimes relating to financial exploitation" as defined in RCW 43.43.830, unless the crime is theft in the third degree, and more than three years have passed since conviction, or unless the crime is forgery or theft in the second degree and more than five years has passed since conviction;

~~(3) Convicted of the manufacture, delivery, or possession with intent to manufacture or deliver drugs under one of the following laws:~~

~~(a) Violation of the Imitation Controlled Substances Act (VICSA);~~

~~(b) Violation of the Uniform Controlled Substances Act (UUCSA);~~

~~(c) Violation of the Uniform Legend Drug Act (VULDA); or~~

~~(d) Violation of the Uniform Precursor Drug Act (VUPDA);~~

~~(4) Convicted of sending or bringing into the state depictions of a minor engaged in sexually explicit conduct;~~

~~(5) Convicted of criminal mistreatment;~~

~~(6) Convicted of a crime in any federal or state court, and the department determines that the crime is equivalent to a crime described in this section;~~

~~(7) Found to have abused, neglected, financially exploited or abandoned a minor or vulnerable adult by a court of law or a disciplining authority, including the department of health;~~

~~(8) Found to have abused or neglected a child and that finding is:~~

~~(a) Listed on the department's background check central unit report; or~~

~~(b) Disclosed by the individual, except for finding made before December, 1998.~~

~~(9) Found to have abused, neglected, financially exploited or abandoned a vulnerable adult and that finding is:~~

~~(a) Listed on any registry, including the department's registry;~~

~~(b) Listed on the department's background check central unit report; or~~

~~(c) Disclosed by the individual, except for adult protective services findings made before October, 2003.) if the individual has one or more of the following disqualifying negative actions:~~

~~(a) A court has issued a permanent restraining order or order of protection, either active or expired, against the person that was based upon abuse, neglect, financial exploitation, or mistreatment of a child or vulnerable adult;~~

~~(b) The individual is a registered sex offender;~~

~~(c) The individual is on a registry based upon a final finding of abuse, neglect or financial exploitation of a vulnerable adult, unless the finding was made by Adult Protective Services prior to October 2003;~~

~~(d) A founded finding of abuse or neglect of a child was made against the person, unless the finding was made by Child Protective Services prior to October 1, 1998;~~

~~(e) The individual was found in any dependency action to have sexually assaulted or exploited any child or to have physically abused any child;~~

~~(f) The individual was found by a court in a domestic relations proceeding under Title 26 RCW, or under any comparable state or federal law, to have sexually abused or exploited any child or to have physically abused any child;~~

~~(g) The person has had a contract or license denied, terminated, revoked, or suspended due to abuse, neglect, financial exploitation, or mistreatment of a child or vulnerable adult; or~~

(h) The person has relinquished a license or terminated a contract because an agency was taking an action against the individual related to alleged abuse, neglect, financial exploitation or mistreatment of a child or vulnerable adult.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-24701 Background checks—Employment—Nondisqualifying information. (1) If the background check results show that an employee or prospective employee has a criminal conviction or ((finding)) pending charge for a crime that is not a disqualifying crime under chapter 388-113 WAC ((388-78A-2470)), then the assisted living facility must determine whether the person has the character, competence and suitability to work with vulnerable adults in long-term care.

(2) Nothing in this section should be interpreted as requiring the employment of any person against the better judgment of the assisted living facility.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-3170 Circumstances ((resulting)) that may result in enforcement remedies. (1) The department is authorized to impose enforcement remedies described in WAC 388-78A-3160 if any person described in subsection (2) of this section is found by the department to have:

(a) A history of significant noncompliance with federal or state laws or regulations in providing care or services to frail elders, vulnerable adults or children, whether as a licensee, contractor, managerial employee or otherwise. Evidence of significant noncompliance may include, without limitation:

(i) Citations for violation of laws or regulations imposed by regulating entities;

(ii) Sanctions for violation of laws or regulations imposed by regulating entities;

(iii) Involuntary termination, cancellation, suspension, or nonrenewal of a medicaid contract or medicare provider agreement, or any other agreement with a public agency for the care or treatment of children, frail elders or vulnerable adults;

(iv) Been denied a license or contract relating to the care of frail elders, vulnerable adults or children; or

(v) Relinquished or failed to renew a license or contract relating to care of frail elders, vulnerable adults or children following written notification of the licensing agency's initiation of denial, suspension, cancellation or revocation of a license.

(b) Failed to provide appropriate care to frail elders, vulnerable adults or children under a contract, or having such contract terminated or not renewed by the contracting agency due to such failure;

(c) ((Been convicted of a felony, or a crime against a person, if the conviction reasonably relates to the competency of the person to operate an assisted living facility;

((d))) Failed or refused to comply with the requirements of chapter 18.20 RCW, applicable provisions of chapter 70.129 RCW or this chapter;

((e)) (d) Retaliated against a staff person, resident or other individual for:

(i) Reporting suspected abuse, neglect, financial exploitation, or other alleged improprieties;

(ii) Providing information to the department during the course of ((the department conducting)) an inspection of the assisted living facility; or

(iii) Providing information to the department during the course of ((the department conducting)) a complaint investigation in the assisted living facility.

((f)) (e) Operated a facility for the care of children or vulnerable adults without a current, valid license or under a defunct or revoked license;

(f) Attempted to obtain a contract or license from the department by fraudulent means or by misrepresentation;

(g) ((Been convicted of a crime)) A conviction or pending charge for a crime that is not automatically disqualifying under chapter 388-113 WAC, but that:

(i) Was committed on an assisted living facility premises; or knowingly permitted, aided or abetted an illegal act on an assisted living facility premises; ((or engaged in))

(ii) Involved the illegal use of drugs or the excessive use of alcohol; or

(iii) Is reasonably related to the competency of the person to operate an assisted living facility.

(h) Abused, neglected or exploited a vulnerable adult ((or));

(i) Had a sanction or corrective or remedial action taken by federal, state, county or municipal officials or safety officials related to the care or treatment of children or vulnerable adults;

(j) ((knowingly failed)) Failed to report alleged abuse, neglect or exploitation of a vulnerable adult ((as required by)) in violation of chapter 74.34 RCW;

((i)) (k) Failed to exercise fiscal accountability and responsibility involving a resident, the department, public agencies, or the business community; or to have insufficient financial resources or unencumbered income to sustain the operation of the assisted living facility;

((j)) (l) Knowingly or with reason to know, made false statements of material fact in the application for the license or the renewal of the license or any data attached thereto, or in any matter under investigation by the department;

((k)) (m) Willfully prevented or interfered with or attempted to impede in any way any inspection or investigation by the department, or the work of any authorized representative of the department or the lawful enforcement of any provision of this chapter;

((l)) (n) Refused to allow department representatives or agents to examine any part of the licensed premises including the books, records and files required under this chapter;

((m)) (o) Moved all residents out of the assisted living facility without the department's approval and appears to be no longer operating as an assisted living facility; or

((n)) (p) Demonstrated any other factors that give evidence the applicant lacks the appropriate character, suitability and competence to provide care or services to vulnerable adults.

(2) This section applies to any assisted living facility:

(a) Applicant;

(b) Partner, officer or director;

(c) Manager or managerial employee; or

(d) Majority owner of the applicant or licensee;

(i) Who is involved in the management or operation of the assisted living facility;

(ii) Who may have direct access to assisted living facility residents;

(iii) Who controls or supervises the provision of care or services to assisted living facility residents; or

(iv) Who exercises control over daily operations of the assisted living facility.

(3) For other circumstances resulting in discretionary enforcement remedies, see WAC 388-78A-3200.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-3190 Denial, suspension, revocation, or nonrenewal of license statutorily required. (1) The department must deny, suspend, revoke, or refuse to renew an assisted living facility license if any person described in subsection (2) of this section ((who may have unsupervised access to residents has a conviction or finding described in WAC 388-78A-2470)) is found by the department to have:

(i) A court has issued a permanent restraining order or order of protection, either active or expired, against the person that was based upon abuse, neglect, financial exploitation, or mistreatment of a child or vulnerable adult;

(ii) The individual is a registered sex offender;

(iii) The individual is on a registry based upon a final finding of abuse, neglect or financial exploitation of a vulnerable adult, unless the finding was made by Adult Protective Services prior to October 2003;

(iv) A founded finding of abuse or neglect of a child was made against the person, unless the finding was made by Child Protective Services prior to October 1, 1998;

(v) The individual was found in any dependency action to have sexually assaulted or exploited any child or to have physically abused any child;

(vi) The individual was found by a court in a domestic relations proceeding under Title 26 RCW, or under any comparable state or federal law, to have sexually abused or exploited any child or to have physically abused any child;

(vii) The person has had a contract or license denied, terminated, revoked, or suspended due to abuse, neglect, financial exploitation, or mistreatment of a child or vulnerable adult; or

(viii) The person has relinquished a license or terminated a contract because an agency was taking an action against the individual related to alleged abuse, neglect, financial exploitation or mistreatment of a child or vulnerable adult.

(2) This section applies to any assisted living facility:

(a) Applicant;

(b) Partner, officer or director;

(c) Manager or managerial employee; or

(d) Owner of five percent or more of the applicant:

(i) Who is involved in the operation of the assisted living facility; or

(ii) Who controls or supervises the provision of care or services to the assisted living facility residents; or

(iii) Who exercises control over daily operations.

WSR 14-05-074
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Aging and Long-Term Support Administration)
 [Filed February 18, 2014, 10:41 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-15-170.

Title of Rule and Other Identifying Information: The department is adding new sections and amending the following sections in chapter 388-97 WAC, Nursing homes: WAC 388-97-0001 Definitions, 388-97-1790 Background checks-General (new section), 388-97-1800 Criminal history disclosure and background inquiries, 388-97-1820 Disqualification from nursing home employment, and 388-97-4220 Reasons for denial, suspension, modification, revocation of, or refusal to renew a nursing home license.

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), on April 22, 2014, at 10:00 a.m.

Date of Intended Adoption: Not earlier than April 23, 2014.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAU RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on April 22, 2014.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by April 1, 2014, TTY (360) 664-6178 or (360) 664-6094 or by e-mail jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending these rules to support the health and safety of residents living in residential settings, to consolidate various secretary's lists in the aging and long-term support administration (ALTSA) thus providing a uniform background check standard for all caregivers, and to reduce the overall costs of processing background checks.

In chapter 388-97 WAC, the disqualifying criminal convictions have been moved to a new chapter, with pending charges added. This requires the amending of the nursing home rules to remove the disqualifying crimes from each applicable section, amend the language to support the reference to the new chapter, and to clarify amendments to the negative actions.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.39A.056, chapters 18.51 and 74.42 RCW.

Statute Being Implemented: RCW 74.39A.056, chapters 18.51 and 74.42 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Jeanette K. Childress, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2591; **Implementation and Enforcement:** Lori Melchiori, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2404.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

SUMMARY OF PROPOSED RULES: The department of social and health services' ALTSA is proposing amendments to chapter 388-101 WAC, Certified community residential care services; chapter 388-78A WAC, Assisted living facilities; chapter 388-76 WAC, Adult family homes; and chapter 388-97 WAC, Nursing homes.

The purpose of this chapter is to: The department is amending these rules to support: (1) The health and safety of residents living in residential settings, (2) the consolidation of various secretary's lists in ALTSA into a new WAC chapter that provides a uniform background check standard for all caregivers, and (3) the reduction of overall costs to process background checks.

The disqualifying criminal convictions have been moved to a new WAC chapter, with pending charges added. This requires the amending of the residential care services (RCS) WACs to remove the disqualifying crimes from each applicable section, amend the language to support the reference to the new WAC chapter, and to clarify amendments to the negative actions. This will result in increased clarity and decreased confusion for providers.

The proposed amendments to these chapters include:

(1) Aligning disqualifying criminal history standards with ALTSA.

(2) The disqualifying criminal convictions have been moved to a new WAC chapter, with pending charges added. This requires amending residential care facilities WACs to remove the disqualifying crimes from each applicable section, amend the language to support the reference to the new WAC chapter, and to clarify amendments to the negative actions.

(3) Creating grandfathering language for workers hired and qualified prior to implementation of new standards, for all but the most egregious crimes.

SMALL BUSINESS ECONOMIC IMPACT STATEMENT—DETERMINATION OF NEED: Chapter 19.85 RCW, the Regulatory Fairness Act, requires that the economic impact of proposed regulations be analyzed in relation to small businesses. The WAC chapter changes related to background check consolidation will not have a disproportionate economic impact on small businesses. The department has thoroughly reviewed background check inefficiencies in place with current rules, as written including:

(1) Duplicate background check requirements for same staff person, driven by current rules.

(2) Conflicting rules in place for same provider/same setting serving clients from two divisions (e.g. home and community services and DDA).

(3) Poor compliance with program rules due to background check complexity, varying standards, and provider confusion.

(4) Negative fiscal and workload impact on both small and large business resulting from regulatory work, contradictory standards, duplicate background check requirements and training needs.

The consolidation and standardization of background check rules across the ALTSA and DDA administrations will result in clarity of rules, efficiency in checks, reduced training needs, improved compliance and will significantly reduce the number of duplicate background checks conducted by affected businesses across the state.

INDUSTRY ANALYSIS: These proposed rules impact all small businesses contracted to provide direct service to clients of RCS including: Certified community residential care services (CCRCs) (approximately one hundred fifty-three providers); adult family homes (AFH) (approximately two thousand seven hundred fifty); assisted living facilities (ALF) (approximately five hundred thirty facilities); and nursing homes (NH) (approximately two hundred thirty).

The majority of these businesses meet the definition of small business defined in RCW 19.85.020. Again, RCS has concluded any negative impact to any specific small business would be negligible and the impact on the industry as a whole will be fiscally positive, while improving the health and safety of vulnerable populations served by two administrations.

INVOLVEMENT OF SMALL BUSINESSES: These rule changes were driven, in part, by demand from businesses. Working drafts have also been shared with stakeholders including CCRCSSs, ALFs, NHs, AFHs and associations, both in person and electronically. Stakeholder input is reflected in the proposed rules.

COST OF COMPLIANCE: Under chapter 19.85 RCW, DDA and ALTSA has considered annual costs to small businesses and concluded there will be no impact of fifty dollars or more per caregiver.

General Costs: RCS analysis revealed that there are no significant costs imposed by the proposed amendments.

Disproportionate Economic Impact Analysis: None.

Mitigating Costs: Not applicable.

Benefits for Proposed Rules: See above.

JOBS CREATED OR LOST: Not applicable.

CONCLUSION: RCS has given careful consideration to the impact of proposed rules in chapter 388-101 WAC, Certified community residential care services; chapter 388-78A WAC, Assisted living facilities; chapter 388-76 WAC, Adult family homes; and chapter 388-97 WAC, Nursing homes[,] on small businesses. To comply with the Regulatory Fairness Act, chapter 19.85 RCW, RCS has analyzed impacts on small businesses and proposed ways to mitigate costs considered more than minor and disproportionate, however, no significant costs were identified.

RCS has concluded that the intent of these rule-making changes are to improve the health and safety of vulnerable populations served by ALTSA.

Please contact Jeanette K. Childress if you have any questions at (360) 725-2591.

A copy of the statement may be obtained by contacting Jeanette Childress, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-2591, e-mail Jeanette.childress@dshs.wa.gov. Under RCW 19.85.025(3), a small business economic impact statement is not required for rules adopting or incorporating, by reference without material change, Washington state statutes or regulations.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Jeanette Childress, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-2591, e-mail Jeanette.childress@dshs.wa.gov.

February 13, 2014
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-04-093, filed 2/6/13, effective 3/9/13)

WAC 388-97-0001 Definitions. "Abandonment" means action or inaction by an individual or entity with a duty of care for a vulnerable adult that leaves the vulnerable individual without the means or ability to obtain necessary food, clothing, shelter, or health care.

"Abuse" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment of a vulnerable adult. In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a vulnerable adult, which have the following meanings:

(1) **"Mental abuse"** means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a resident from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing.

(2) **"Physical abuse"** means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or restraints including chemical restraints, unless the restraint is consistent with licensing requirements.

(3) **"Sexual abuse"** means any form of nonconsensual sexual contact, including, but not limited to, unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual contact may include interactions that do not involve touching, including but not limited to sending a resident sexually explicit messages, or cuing or encouraging a resident to perform sexual acts. Sexual abuse includes any sexual contact between a staff person and a resident, whether or not it is consensual.

(4) **"Exploitation"** means an act of forcing, compelling, or exerting undue influence over a resident causing the resident to act in a way that is inconsistent with relevant past behavior, or causing the resident to perform services for the benefit of another.

"Administrative hearing" is a formal hearing proceeding before a state administrative law judge that gives:

(1) A licensee an opportunity to be heard in disputes about licensing actions, including the imposition of remedies, taken by the department; or

(2) An individual an opportunity to appeal a finding of abandonment, abuse, neglect, financial exploitation of a resident, or misappropriation of a resident's funds.

"Administrative law judge (ALJ)" means an impartial decision-maker who presides over an administrative hearing. ALJs are employed by the office of administrative hearings (OAH), which is a separate state agency. ALJs are not DSHS employees or DSHS representatives.

"Administrator" means a nursing home administrator, licensed under chapter 18.52 RCW, who must be in active administrative charge of the nursing home, as that term is defined in the board of nursing home administrator's regulations.

"Advanced registered nurse practitioner (ARNP)" means an individual who is licensed to practice as an advanced registered nurse practitioner under chapter 18.79 RCW.

"Applicant" means an individual, partnership, corporation, or other legal entity seeking a license to operate a nursing home.

"ASHRAE" means the American Society of Heating, Refrigerating, and Air Conditioning Engineers, Inc.

"Attending physician" means the doctor responsible for a particular individual's total medical care.

"Berm" means a bank of earth piled against a wall.

"Chemical restraint" means a psychopharmacologic drug that is used for discipline or convenience and is not required to treat the resident's medical symptoms.

"Civil adjudication proceeding" means judicial or administrative adjudicative proceeding that results in a finding of, or upholds an agency finding of, domestic violence, abuse, sexual abuse, neglect, abandonment, violation of a professional licensing standard regarding a child or vulnerable adult, or exploitation or financial exploitation of a child or vulnerable adult under any provision of law, including but not limited to chapter 13.34, 26.44, or 74.34 RCW, or rules adopted under chapters 18.51 and 74.42 RCW. "Civil adjudication proceeding" also includes judicial or administrative findings that become final due to the failure of the alleged perpetrator to timely exercise a legal right to administratively challenge such findings.

"Civil fine" is a civil monetary penalty assessed against a nursing home as authorized by chapters 18.51 and 74.42 RCW. There are two types of civil fines, "per day" and "per instance."

(1) **"Per day fine"** means a fine imposed for each day that a nursing home is out of compliance with a specific requirement. Per day fines are assessed in accordance with WAC 388-97-4580(1); and

(2) **"Per instance fine"** means a fine imposed for the occurrence of a deficiency.

"Condition on a license" means that the department has imposed certain requirements on a license and the licensee cannot operate the nursing home unless the requirements are observed.

"Deficiency" is a nursing home's failed practice, action or inaction that violates any or all of the following:

(1) Requirements of chapters 18.51 or 74.42 RCW, or the requirements of this chapter; and

(2) In the case of a medicare and medicaid contractor, participation requirements under Title XVIII and XIX of the Social Security Act and federal medicare and medicaid regulations.

"Deficiency citation" or **"cited deficiency"** means written documentation by the department that describes a nursing home's deficiency(ies); the requirement that the deficiency(ies) violates; and the reasons for the determination of noncompliance.

"Deficient facility practice" or **"failed facility practice"** means the nursing home action(s), error(s), or lack of action(s) that provide the basis for the deficiency.

"Dementia care" means a therapeutic modality or modalities designed specifically for the care of persons with dementia.

"Denial of payment for new admissions" is an action imposed on a nursing home (facility) by the department that prohibits payment for new medicaid admissions to the nursing home after a specified date. Nursing homes certified to provide medicare and medicaid services may also be subjected to a denial of payment for new admissions by the federal Centers for Medicare and Medicaid Services.

"Department" means the state department of social and health services (DSHS).

"Department on-site monitoring" means an optional remedy of on-site visits to a nursing home by department staff according to department guidelines for the purpose of monitoring resident care or services or both.

"Dietitian" means a qualified dietitian. A qualified dietitian is one who is registered by the American Dietetic Association or certified by the state of Washington.

"Disclosure statement" means a signed statement by an individual in accordance with the requirements under RCW 43.43.834. The statement should include a disclosure of whether or not the individual has been convicted of certain crimes or has been found by any court, state licensing board, disciplinary board, or protection proceeding to have neglected, sexually abused, financially exploited, or physically abused any minor or adult individual.

"Drug" means a substance:

(1) Recognized as a drug in the official *United States Pharmacopoeia*, *Official Homeopathic Pharmacopoeia of the United States*, *Official National Formulary*, or any supplement to any of them; or

(2) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease.

"Drug facility" means a room or area designed and equipped for drug storage and the preparation of drugs for administration.

"Emergency closure" is an order by the department to immediately close a nursing home.

"Emergency transfer" means immediate transfer of residents from a nursing home to safe settings.

"Entity" means any type of firm, partnership, corporation, company, association, or joint stock association.

"Financial exploitation" means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person or entity's profit or advantage other than the vulnerable adult's profit or advantage. Some examples of financial exploitation are given in RCW 74.34.020(6).

"Habilitative services" means the planned interventions and procedures which constitute a continuing and comprehensive effort to teach an individual previously undeveloped skills.

"Highest practicable physical, mental, and psychosocial well-being" means providing each resident with the necessary individualized care and services to assist the resident to achieve or maintain the highest possible health, functional and independence level in accordance with the resident's comprehensive assessment and plan of care. Care and services provided by the nursing home must be consistent with all requirements in this chapter, chapters 74.42 and 18.51 RCW, and the resident's informed choices. For medicaid and medicare residents, care and services must also be consistent with Title XVIII and XIX of the Social Security Act and federal medicare and medicaid regulations.

"Informal department review" is a dispute resolution process that provides an opportunity for the licensee or administrator to informally present information to a department representative about disputed, cited deficiencies. Refer to WAC 388-97-4420.

"Inspection" or "survey" means the process by which department staff evaluates the nursing home licensee's compliance with applicable statutes and regulations.

"Intermediate care facility for individuals with intellectual disabilities (ICF/IID)" means an institution certified under chapter 42 C.F.R., Part 483, Subpart I, and licensed under chapter 18.51 RCW.

"License revocation" is an action taken by the department to cancel a nursing home license in accordance with RCW 18.51.060 and WAC 388-97-4220.

"License suspension" is an action taken by the department to temporarily revoke a nursing home license in accordance with RCW 18.51.060 and this chapter.

"Licensee" means an individual, partnership, corporation, or other legal entity licensed to operate a nursing home.

"Licensed practical nurse" means an individual licensed to practice as a licensed practical nurse under chapter 18.79 RCW;

"Mandated reporter" as used in this chapter means any employee of a nursing home, any health care provider subject to chapter 18.130 RCW, the Uniform Disciplinary Act, and any licensee or operator of a nursing home. Under RCW 74.34.020, mandated reporters also include any employee of the department of social and health services, law enforcement officers, social workers, professional school personnel, individual providers, employees and licensees of assisted living facility, adult family homes, soldiers' homes, residential habilitation centers, or any other facility licensed by the department, employees of social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agencies, county coroners or medical examiners, or Christian Science practitioners.

"Misappropriation of resident property" means the deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident's belongings or money.

"NFPA" means National Fire Protection Association, Inc.

"Neglect":

(1) In a nursing home licensed under chapter 18.51 RCW, neglect means that an individual or entity with a duty of care for nursing home residents has:

(a) By a pattern of conduct or inaction, failed to provide goods and services to maintain physical or mental health or to avoid or prevent physical or mental harm or pain to a resident; or

(b) By an act or omission, demonstrated a serious disregard of consequences of such magnitude as to constitute a clear and present danger to the resident's health, welfare, or safety.

(2) In a skilled nursing facility or nursing facility, neglect also means a failure to provide a resident with the goods and services necessary to avoid physical harm, mental anguish, or mental illness.

"Noncompliance" means a state of being out of compliance with state and/or federal requirements for nursing homes/facilities.

"Nursing assistant" means a nursing assistant as defined under RCW 18.88A.020 or successor laws.

"Nursing facility (NF)" or "medicaid-certified nursing facility" means a nursing home, or any portion of a hospital, veterans' home, or residential habilitation center, that is certified to provide nursing services to medicaid recipients under Section 1919(a) of the federal Social Security Act. All beds in a nursing facility are certified to provide medicaid services, even though one or more of the beds are also certified to provide medicare skilled nursing facility services.

"Nursing home" means any facility licensed to operate under chapter 18.51 RCW.

"Officer" means an individual serving as an officer of a corporation.

"Owner of five percent or more of the assets of a nursing home" means:

(1) The individual, and if applicable, the individual's spouse, who operates, or is applying to operate, the nursing home as a sole proprietorship;

(2) In the case of a corporation, the owner of at least five percent of the shares or capital stock of the corporation; or

(3) In the case of other types of business entities, the owner of a beneficial interest in at least five percent of the capital assets of an entity.

"Partner" means an individual in a partnership owning or operating a nursing home.

"Permanent Restraining Order" means a restraining order or order of protection issued either following a hearing, or by stipulation of the parties. A "permanent" order may be in force for a specific time period (for example, 1 year), after which it expires.

"Person" means any individual, firm, partnership, corporation, company, association or joint stock association.

"Pharmacist" means an individual licensed by the Washington state board of pharmacy under chapter 18.64 RCW.

"Pharmacy" means a place licensed under chapter 18.64 RCW where the practice of pharmacy is conducted.

"Physical restraint" means any manual method or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that the resident cannot remove easily, and which restricts freedom of movement or access to the resident's body.

"Physician's assistant (PA)" means a physician's assistant as defined under chapter 18.57A or 18.71A RCW or successor laws.

"Plan of correction" is a nursing home's written response to cited deficiencies that explains how it will correct the deficiencies and how it will prevent their recurrence.

"Reasonable accommodation" and **"reasonably accommodate"** has the meaning given in federal and state anti-discrimination laws and regulations. For the purpose of this chapter:

(1) Reasonable accommodation means that the nursing home must:

(a) Not impose admission criteria that excludes individuals unless the criteria is necessary for the provision of nursing home services;

(b) Make reasonable modification to its policies, practices or procedures if the modifications are necessary to accommodate the needs of the resident;

(c) Provide additional aids and services to the resident.

(2) Reasonable accommodations are not required if:

(a) The resident or individual applying for admission presents a significant risk to the health or safety of others that cannot be eliminated by the reasonable accommodation;

(b) The reasonable accommodations would fundamentally alter the nature of the services provided by the nursing home; or

(c) The reasonable accommodations would cause an undue burden, meaning a significant financial or administrative burden.

"Receivership" is established by a court action and results in the removal of a nursing home's current licensee and the appointment of a substitute licensee to temporarily operate the nursing home.

"Recurring deficiency" means a deficiency that was cited by the department, corrected by the nursing home, and then cited again within fifteen months of the initial deficiency citation.

"Registered nurse" means an individual licensed to practice as a registered nurse under chapter 18.79 RCW.

"Rehabilitative services" means the planned interventions and procedures which constitute a continuing and comprehensive effort to restore an individual to the individual's former functional and environmental status, or alternatively, to maintain or maximize remaining function.

"Resident" generally means an individual residing in a nursing home. Except as specified elsewhere in this chapter, for decision-making purposes, the term "resident" includes the resident's surrogate decision maker acting under state law. The term resident excludes outpatients and individuals receiving adult day or night care, or respite care.

"Resident care unit" means a functionally separate unit including resident rooms, toilets, bathing facilities, and basic service facilities.

"Respiratory isolation" is a technique or techniques instituted to prevent the transmission of pathogenic organisms by means of droplets and droplet nuclei coughed, sneezed, or breathed into the environment.

"Siphon jet clinic service sink" means a plumbing fixture of adequate size and proper design for waste disposal with siphon jet or similar action sufficient to flush solid matter of at least two and one-eighth inches in diameter.

"Skilled nursing facility (SNF)" or **"medicare-certified skilled nursing facility"** means a nursing home, a portion of a nursing home, or a long-term care wing or unit of a hospital that has been certified to provide nursing services to medicare recipients under Section 1819(a) of the federal Social Security Act.

"Social/therapeutic leave" means leave which is for the resident's social, emotional, or psychological well-being; it does not include medical leave.

"Staff work station" means a location at which nursing and other staff perform charting and related activities throughout the day.

"Stop placement" or **"stop placement order"** is an action taken by the department prohibiting nursing home admissions, readmissions, and transfers of patients into the nursing home from the outside.

"Substantial compliance" means the nursing home has no deficiencies higher than severity level 1 as described in WAC 388-97-4500, or for medicaid certified facility, no deficiencies higher than a scope and severity "C."

"Surrogate decision maker" means a resident representative or representatives as outlined in WAC 388-97-0240, and as authorized by RCW 7.70.065.

"Survey" means the same as **"inspection"** as defined in this section.

"Temporary manager" means an individual or entity appointed by the department to oversee the operation of the nursing home to ensure the health and safety of its residents, pending correction of deficiencies or closure of the facility.

"Temporary Restraining Order" means restraining order or order of protection that expired without a hearing, was dismissed following an initial hearing, or was dismissed by stipulation of the parties before an initial hearing.

"Termination" means an action taken by:

(1) The department, or the nursing home, to cancel a nursing home's medicaid certification and contract; or

(2) The department of health and human services Centers for Medicare and Medicaid Services, or the nursing home, to cancel a nursing home's provider agreement to provide services to medicaid or medicare recipients, or both.

"Toilet room" means a room containing at least one toilet fixture.

"Uncorrected deficiency" is a deficiency that has been cited by the department and that is not corrected by the licensee by the time the department does a revisit.

"Violation" means the same as **"deficiency"** as defined in this section.

"Volunteer" means an individual who is a regularly scheduled individual not receiving payment for services and having unsupervised access to a nursing home resident.

"Vulnerable adult" includes a person:

- (1) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or
- (2) Found incapacitated under chapter 11.88 RCW; or
- (3) Who has a developmental disability as defined under RCW 71A.10.020; or
- (4) Admitted to any facility, including any assisted living facility; or
- (5) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or
- (6) Receiving services from an individual provider; or
- (7) With a functional disability who lives in his or her own home, who is directing and supervising a paid personal aide to perform a health care task as authorized by RCW 74.39.050.

"Whistle blower" means a resident, employee of a nursing home, or any person licensed under Title 18 RCW, who in good faith reports alleged abandonment, abuse, financial exploitation, or neglect to the department, the department of health or to a law enforcement agency.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

NEW SECTION

WAC 388-97-1790 Background checks—General.

(1) If any background check results show that an employee or prospective employee has a conviction or pending charge for a crime that is not automatically disqualifying under chapter 388-113 WAC, then the nursing home must:

- (a) Determine whether the person has the character, competence and suitability to work with vulnerable adults in long-term care; and
- (b) Document in writing the basis for making the decision, and make it available to the department upon request.

(2) Nothing in this section should be interpreted as requiring the employment of any person against the better judgment of the nursing home. In addition to chapter 71A.12 RCW, these rules are authorized by RCW 43.20A.710, RCW 43.43.830 through 43.43.842 and RCW 74.39A.051.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 10-02-021, filed 12/29/09, effective 1/29/10)

WAC 388-97-1800 Criminal history disclosure and background inquiries. (1) As used in this section, the term "nursing home" includes a nursing facility and a skilled nursing facility.

(2) The nursing home must:

- (a) Have a valid criminal history background check for any individual employed, directly or by contract, or any individual accepted as a volunteer or student who may have unsupervised access to any resident; and
- (b) Repeat the check every two years.

(3) A nursing home licensed under chapter 18.51 RCW, or nursing facility or skilled nursing facility must make a background inquiry request to one of the following:

- (a) ~~((The Washington state patrol;~~
- ~~(b))~~ The department;
- ~~((e)))~~ (b) The most recent employer licensed under chapters 18.51, 18.20, and 70.128 RCW provided termination of that employment was within twelve months of the current employment application and provided the inquiry was completed by the department or the Washington state patrol within the two years of the current date of application; or

~~((d)))~~ (c) A nurse pool agency licensed under chapter 18.52C RCW, or hereafter renamed, provided the background inquiry was completed by the Washington state patrol within two years before the current date of employment in the nursing home.

(4) A nursing home may not rely on a criminal background inquiry from a former employer, including a nursing pool, if the nursing home knows or has reason to know that the individual applying for the job ~~((has)) is, or may ((have)) be ((, a disqualifying conviction or finding)) disqualified under the requirements of WAC 388-97-1820.~~

(5) Nursing homes must:

- (a) Request a background inquiry of any individual employed, directly or by agreement or contract, or accepted as a volunteer or student; and

(b) Notify the appropriate licensing or certification agency of any individual ~~((resigning)) who resigns or is terminated ((as a result of a criminal conviction or a civil adjudication proceeding)) because he or she is disqualified from employment under WAC 388-97-1820.~~

(6) Before a nursing home employs any individual, directly or by contract, or accepts any individual as a volunteer or student, a nursing home must:

(a) Inform the individual that the nursing home must make a background inquiry and require the individual to sign a disclosure statement, under penalty ~~((of))~~ of perjury and in accordance with RCW 43.43.834;

(b) Inform the individual that he or she may request a copy of the results of the completed background inquiry described in this section; and

(c) Require the individual to sign a statement authorizing the nursing home, the department, and the Washington state patrol to make a background inquiry; and

(d) Verbally inform the individual of the background inquiry results within seventy-two hours of receipt.

(7) The nursing home must establish procedures ensuring that:

(a) The individual is verbally informed of the background inquiry results within seventy-two hours of receipt;

(b) All disclosure statements and background inquiry responses and all copies are maintained in a confidential and secure manner;

(c) Disclosure statements and background inquiry responses are used for employment purposes only;

(d) Disclosure statements and background inquiry responses are not disclosed to any individual except:

(i) The individual about whom the nursing home made the disclosure or background inquiry;

(ii) Authorized state employees including the department's licensure and certification staff, resident protection program staff and background inquiry unit staff;

(iii) Authorized federal employees including those from the Department of Health and Human Services, Centers for Medicare and Medicaid Services;

(iv) The Washington state patrol auditor; and

(v) Potential employers licensed under chapters 18.51, 18.20, and 70.128 RCW who are making a request as provided for under subsection (1) of this section.

(e) A record of findings be retained by the nursing home for twelve months beyond the date of employment termination.

((8) ~~The nursing home must not employ individuals who are disqualified under the requirements of WAC 388-97-1820.~~))

AMENDATORY SECTION (Amending WSR 10-02-021, filed 12/29/09, effective 1/29/10)

WAC 388-97-1820 Disqualification from nursing home employment. (1) The nursing home must not employ directly or by contract, or accept as a volunteer or student, any individual:

(a) ~~((Who has been found to have abused, neglected, exploited or abandoned a minor or vulnerable adult by a court of law, by a disciplining authority, including the state department of health;~~

~~(b) With a finding of abuse or neglect of a child that is:~~

~~(i) Listed on the department's background check central unit (BCCU) report; or~~

~~(ii) Disclosed by the individual, except for findings made before December, 1998.~~

~~(e) With a finding of abandonment, abuse, neglect, or financial exploitation of a vulnerable adult that is:~~

~~(i) Listed on any registry, including the department registry;~~

~~(ii) Listed on the department's background check central unit (BCCU) report; or~~

~~(iii) Disclosed by the individual, except for adult protective services findings made before October, 2003.~~

~~(2) Except as provided in this section, the nursing home must not employ directly or by contract, or accept as a volunteer or student, any individual who may have unsupervised access to residents if the individual:~~

~~(a) Has been convicted of a "crime against children and other persons" as defined in RCW 43.43.830, unless the individual has been convicted of one of the two crimes listed below and the required number of years has passed between the most recent conviction and the date of the application for employment:~~

~~(i) Simple assault, assault in the fourth degree, or the same offense as it may hereafter be renamed, and three or more years have passed; or~~

~~(ii) Prostitution, or the same offense as it may hereafter be renamed, and three or more years have passed.~~

~~(b) Has been convicted of crimes relating to financial exploitation as defined in RCW 43.43.830, unless the individual has been convicted of one of the three crimes listed below and the required number of years has passed between~~

~~the most recent conviction and the date of the application for employment:~~

~~(i) Theft in the second degree, or the same offense as it may hereafter be renamed, and five or more years have passed;~~

~~(ii) Theft in the third degree, or the same offense as it may hereafter be renamed, and three or more years have passed; or~~

~~(iii) Forgery, or the same offense as forgery may hereafter be renamed, and five or more years have passed.~~

~~(e) Has been convicted of:~~

~~(i) Violation of the Imitation Controlled Substances Act (VICSA);~~

~~(ii) Violation of the Uniform Controlled Substances Act (VUCSA);~~

~~(iii) Violation of the Uniform Legend Drug Act (VULDA); or~~

~~(iv) Violation of the Uniform Precursor Drug Act (VUPDA).~~

~~(d) Has been convicted of sending or bringing into the state depictions of a minor engaged in sexually explicit conduct.~~

~~(e) Has been convicted of criminal mistreatment.~~

~~(f) Has been convicted in another state of a crime that is equivalent to a crime listed in subsection (2)(a) through (e) of this section.~~

~~(3) The term "vulnerable adult" is defined in RCW 74.34.020; the term "unsupervised access" is defined in RCW 43.43.830.~~

~~(4) Who has a criminal conviction or pending charge for a crime, which is automatically disqualifying under chapter 388-113 WAC:~~

~~(b) Who has one or more of the following disqualifying negative actions:~~

~~(i) Is on a registry based upon a final finding of abuse, neglect, or financial exploitation of a vulnerable adult, unless the finding was made by adult protective services prior to October 2003;~~

~~(ii) Has a founded finding of abuse or neglect of a child that was made against the person, unless the finding was made by child protective services prior to October 1, 1998;~~

~~(iii) Had a contract or license denied, terminated, revoked, or suspended due to abuse, neglect, financial exploitation, or mistreatment of a child or vulnerable adult;~~

~~(iv) Has relinquished a license or terminated a contract because an agency was taking an action against the individual related to alleged abuse, neglect, financial exploitation or mistreatment of a child or vulnerable adult;~~

~~(v) Was found in any dependency action to have sexually assaulted or exploited any child or to have physically abused any child;~~

~~(vi) Was found by a court in a domestic relations proceeding under Title 26 RCW, or under any comparable state or federal law, to have sexually abused or exploited any child or to have physically abused any child;~~

~~(vii) A court has issued a permanent restraining order or order of protection, either active or expired, against the individual that was based upon abuse, neglect, financial exploitation, or mistreatment of a child or vulnerable adult; or~~

~~(viii) Is a registered sex offender.~~

(3) In addition to chapters 18.51 and 74.42 RCW, these rules are authorized by RCW 43.20A.710, 43.43.830 through 43.43.842 and 74.39A.050(8).

Reviser's note: The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 10-02-021, filed 12/29/09, effective 1/29/10)

WAC 388-97-4220 Reasons for denial, suspension, modification, revocation of, or refusal to renew a nursing home license. (1) The department may deny, suspend, modify, revoke, or refuse to renew a nursing home license when the department finds the proposed or current licensee, or any partner, officer, director, managing employee, owner of five percent or more of the proposed or current licensee of the nursing home, owner of five percent or more of the assets of the nursing home, proposed or current administrator, or employee or individual providing nursing home care or services has:

(a) Failed or refused to comply with the:

(i) Requirements established by chapters 18.51, 74.42, or 74.46 RCW and by regulations adopted under these chapters; or

(ii) Medicaid requirements of Title XIX of the Social Security Act and medicaid regulations, including 42 C.F.R., Part 483.

(b) A history of significant noncompliance with federal or state regulations in providing nursing home care;

(c) No credit history or a poor credit history;

(d) Engaged in the illegal use of drugs or the excessive use of alcohol ((or been convicted of "crimes relating to drugs" as defined in RCW 43.43.830, unless subsection (3)(e) applies)), unless automatically disqualifying under chapter 388-113 WAC;

(e) Unlawfully operated a nursing home, or long term care facility as defined in RCW 70.129.010, without a license or under a revoked or suspended license;

(f) Previously held a license to operate a hospital or any facility for the care of children or vulnerable adults, and that license has been revoked, or suspended, or the licensee did not seek renewal of the license following written notification of the licensing agency's initiation of revocation or suspension of the license;

(g) Obtained or attempted to obtain a license by fraudulent means or misrepresentation;

(h) Permitted, aided, or abetted the commission of any illegal act on the nursing home premises;

(i) ((Been convicted of a felony or other)) Has a conviction or pending charge for a crime that ((would) is not ((be)) automatically disqualifying under ((RCW 74.39A.050(8) or this)) chapter 388-113 WAC, if the conviction or pending charge reasonably relates to the competency of the individual to own or operate a nursing home;

(j) Had a sanction, corrective, or remedial action taken by federal, state, county or municipal officials or safety officials related to the care or treatment of children or vulnerable adults;

(k) Failed to:

(i) Provide any authorization, documentation, or information the department requires in order to verify information contained in the application;

(ii) Meet financial obligations as the obligations fall due in the normal course of business;

(iii) Verify additional information the department determines relevant to the application;

(iv) Report abandonment, abuse, neglect or financial exploitation in violation of chapter 74.34 RCW; or in the case of a skilled nursing facility or nursing facilities, failure to report as required by 42 C.F.R. 483.13; or

(v) Pay a civil fine the department assesses under this chapter within ten days after assessment becomes final.

(l) Been certified pursuant to RCW 74.20A.320 as a person who is not in compliance with a child support order (license suspension only);

(m) Knowingly or with reason to know makes a false statement of a material fact in the application for a license or license renewal, in attached data, or in matters under department investigation;

(n) Refused to allow department representatives or agents to inspect required books, records, and files or portions of the nursing home premises;

(o) Willfully prevented, interfered with, or attempted to impede the work of authorized department representatives in the:

(i) Lawful enforcement of provisions under this chapter or chapters 18.51 or 74.42 RCW; or

(ii) Preservation of evidence of violations of provisions under this chapter or chapters 18.51 or 74.42 RCW.

(p) Retaliated against a resident or employee initiating or participating in proceedings specified under RCW 18.51.220; or

(q) Discriminated against medicaid recipients as prohibited under RCW 74.42.055.

(2) In determining whether there is a history of significant noncompliance with federal or state regulations under subsection (1)(b), the department may, at a minimum, consider:

(a) Whether the violation resulted in a significant harm or a serious and immediate threat to the health, safety, or welfare of any resident;

(b) Whether the proposed or current licensee promptly investigated the circumstances surrounding any violation and took steps to correct and prevent a recurrence of a violation;

(c) The history of surveys and complaint investigation findings and any resulting enforcement actions;

(d) Repeated failure to comply with regulations;

(e) Inability to attain compliance with cited deficiencies within a reasonable period of time; and

(f) The number of violations relative to the number of facilities the proposed or current licensee, or any partner, officer, director, managing employee, employee or individual providing nursing home care or services has been affiliated within the past ten years, or owner of five percent or more of the proposed or current licensee or of the assets of the nursing home.

(3) The department must deny, suspend, revoke, or refuse to renew a proposed or current licensee's nursing home

license if the proposed or current licensee or any partner, officer, director, managing employee, owner of five percent or more of the proposed or current licensee of the nursing home or owner of five percent or more of the assets of the nursing home, proposed or current administrator, or employee or individual providing nursing home care or services has ((been:

(a) Convicted of a "crime against children or other persons" as defined under RCW 43.43.830 unless the individual has been convicted of one of the two crimes listed below and the required number of years has passed between the most recent conviction and the date of the application for employment:

(i) Simple assault, assault in the fourth degree, or the same offense as it may hereafter be renamed, and three or more years have passed;

(ii) Prostitution, or the same offense as it may hereafter be renamed, and three or more years have passed;

(b) Convicted of a "crime relating to financial exploitation" as defined under RCW 43.43.830 unless the individual has been convicted of one of the three crimes listed below and the required number of years has passed between the most recent conviction and the date of the application for employment:

(i) Theft in the second degree, or the same offense as it may hereafter be renamed, and five or more years have passed;

(ii) Theft in the third degree, or the same offense as it may hereafter be renamed, and three or more years have passed; or

(iii) Forgery, or the same offense as it may hereafter be renamed, and five or more years have passed.

(c) Convicted of:

(i) Violation of the Imitation Controlled Substances Act (VICSA);

(ii) Violation of the Uniform Controlled Substances Act (UUCSA);

(iii) Violation of the Uniform Legend Drug Act (VULDA); or

(iv) Violation of the Uniform Precursor Drug Act (VUPDA).

(d) Convicted of sending or bringing into the state depictions of a minor engaged in sexually explicit conduct;

(e) Convicted of criminal mistreatment;

(f) Found by a court in a criminal proceeding or a protection proceeding under chapter 74.34 RCW, or any comparable state or federal law, to have abandoned, abused, neglected or financially exploited a vulnerable adult;

(g) Found in any final decision issued by a disciplinary board to have sexually or physically abused or exploited any minor or an individual with a developmental disability or to have abused, neglected, abandoned, or financially exploited any vulnerable adult;

(h) Found in any dependency action to have sexually assaulted or exploited any minor or to have physically abused any minor;

(i) Found by a court in a domestic relations proceeding under Title 26 RCW, or any comparable state or federal law, to have sexually abused or exploited any minor or to have physically abused any minor;

(j) Found to have abused or neglected a child, and the finding is:

(i) Listed on the department's background check central unit (BCCU) report; or

(ii) Disclosed by the individual, except for findings made before December, 1998;

(k) Found to have abandoned, abused, neglected, or financially exploited a vulnerable adult, and the finding is:

(i) Listed on any registry, including the department registry;

(ii) Listed on the department's background check central unit (BCCU) report; or

(iii) Disclosed by the individual, except for adult protective services findings made before October, 2003.);

(a) A conviction or pending charge for a crime that is automatically disqualifying under chapter 388-113 WAC; or

(b) One or more of the disqualifying negative actions listed under WAC 388-97-1820.

WSR 14-05-075
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Aging and Long-Term Support Administration)

[Filed February 18, 2014, 10:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-15-173.

Title of Rule and Other Identifying Information: The department is adding new sections and amending the following sections in chapter 388-76 WAC, Adult family homes: WAC 388-76-10000 Definitions, 388-76-10120 License—Must be denied, 388-76-10125 License—May be denied, 388-76-10130 Qualifications—Provider, entity representative and resident manager, 388-76-10135 Qualifications—Caregiver, 388-76-10145 Qualifications—Licensed nurse as provider, entity representative or resident manager, 388-76-10150 Assessor, 388-76-10161 Background checks—Who is required to have, 388-76-10163 Background checks—Process—Background authorization form, 388-76-101631 Background checks—Washington state name and date of birth background check, 388-76-101632 Background checks—National fingerprint background check, 388-76-10164 Background checks—Results, 388-76-10166 Background checks—Household members, noncaregiving and unpaid staff—Unsupervised access, 388-76-10174 Background check—Disclosure of information—Sharing of background information by health care facilities, 388-76-10175 Background checks—Employment—Conditional hire—Pending results of Washington state name and date of birth background check, 388-76-10180 Background checks—Employment—Disqualifying information, 388-76-10181 Background checks—Employment—Nondisqualifying information, and 388-76-10955 Remedies—Department must impose remedies.

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504

(public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), on April 22, 2014, at 10:00 a.m.

Date of Intended Adoption: Not earlier than April 23, 2014.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAU RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on April 22, 2014.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by April 1, 2014, TTY (360) 664-6178 or (360) 664-6094 or by e-mail jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending these rules to support the health and safety of residents living in residential setting, to consolidate various secretary's lists in aging and long-term support administration (ALTSA) thus providing a uniform background check standard for all caregivers and to reduce the overall costs of processing background checks.

In chapter 388-76 WAC, the disqualifying criminal convictions have been moved to a new WAC chapter, with pending charges added. This requires the amending of the adult family homes rules to remove the disqualifying crimes from each applicable section, amend the language to support the reference to the new WAC chapter, and to clarify amendments to the negative actions.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.39A.056, chapters 18.20 and 74.34 RCW.

Statute Being Implemented: RCW 74.39A.056, chapters 18.20 and 74.34 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Jeanette K. Childress, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2591; Implementation and Enforcement: Lori Melchiori, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2404.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

SUMMARY OF PROPOSED RULES: The department of social and health services' ALTSA is proposing amendments to chapter 388-101 WAC, Certified community residential care services; chapter 388-78A WAC, Assisted living facilities; chapter 388-76 WAC, Adult family homes; and chapter 388-97 WAC, Nursing homes.

The purpose of this chapter is to: The department is amending these rules to support: (1) The health and safety of residents living in residential settings, (2) the consolidation of various secretary's lists in ALTSA into a new WAC chapter that provides a uniform background check standard for all caregivers, and (3) the reduction of overall costs to process background checks.

The disqualifying criminal convictions have been moved to a new WAC chapter, with pending charges added. This requires the amending of the residential care services (RCS) WACs to remove the disqualifying crimes from each applicable section, amend the language to support the reference to the new WAC chapter, and to clarify amendments to the negative actions. This will result in increased clarity and decreased confusion for providers.

The proposed amendments to these chapters include:

(1) Aligning disqualifying criminal history standards with ALTSA.

(2) The disqualifying criminal convictions have been moved to a new WAC chapter, with pending charges added. This requires amending residential care facilities WACs to remove the disqualifying crimes from each applicable section, amend the language to support the reference to the new WAC chapter, and to clarify amendments to the negative actions.

(3) Creating grandfathering language for workers hired and qualified prior to implementation of new standards, for all but the most egregious crimes.

SMALL BUSINESS ECONOMIC IMPACT STATEMENT—DETERMINATION OF NEED: Chapter 19.85 RCW, the Regulatory Fairness Act (RFA), requires that the economic impact of proposed regulations be analyzed in relation to small businesses. The WAC chapter changes related to background check consolidation will not have a disproportionate economic impact on small businesses. The department has thoroughly reviewed background check inefficiencies in place with current rules, as written including:

(1) Duplicate background check requirements for same staff person, driven by current rules.

(2) Conflicting rules in place for same provider/same setting serving clients from two divisions (e.g. home and community services and DDA).

(3) Poor compliance with program rules due to background check complexity, varying standards, and provider confusion.

(4) Negative fiscal and workload impact on both small and large business resulting from regulatory work, contradictory standards, duplicate background check requirements and training needs.

The consolidation and standardization of background check rules across the ALTSA and DDA administrations will result in clarity of rules, efficiency in checks, reduced training needs, improved compliance and will significantly reduce the number of duplicate background checks conducted by affected businesses across the state.

INDUSTRY ANALYSIS: These proposed rules impact all small businesses contracted to provide direct service to clients of RCS including: Certified community residential care services (CCRCS) (approximately one hundred fifty-three providers); adult family homes (AFH) (approximately two thousand seven hundred fifty); assisted living facilities (ALF) (approximately five hundred thirty facilities); and nursing homes (NH) (approximately two hundred thirty).

The majority of these businesses meet the definition of small business defined in RCW 19.85.020. Again, RCS has concluded any negative impact to any specific small business would be negligible and the impact on the industry as a whole

will be fiscally positive, while improving the health and safety of vulnerable populations served by two administrations.

INVOLVEMENT OF SMALL BUSINESSES: These rule changes were driven, in part, by demand from businesses. Working drafts have also been shared with stakeholders including CCRCSSs, ALFs, NHs, AFHs and associations, both in person and electronically. Stakeholder input is reflected in the proposed rules.

COST OF COMPLIANCE: Under chapter 19.85 RCW, DDA and ALTSA has considered annual costs to small businesses and concluded there will be no impact of fifty dollars or more per caregiver.

General Costs: RCS analysis revealed that there are no significant costs imposed by the proposed amendments.

Disproportionate Economic Impact Analysis: None.

Mitigating Costs: Not applicable.

Benefits for Proposed Rules: See above.

JOBS CREATED OR LOST: Not applicable.

CONCLUSION: RCS has given careful consideration to the impact of proposed rules in chapter 388-101 WAC, Certified community residential care services; chapter 388-78A WAC, Assisted living facilities; chapter 388-76 WAC, Adult family homes; and chapter 388-97 WAC, Nursing homes, on small businesses. To comply with the RFA, chapter 19.85 RCW, RCS has analyzed impacts on small businesses and proposed ways to mitigate costs considered more than minor and disproportionate, however, no significant costs were identified.

RCS has concluded that the intent of these rule-making changes are to improve the health and safety of vulnerable populations served by ALTSA.

Please contact Jeanette K. Childress if you have any questions at (360) 725-2591.

A copy of the statement may be obtained by contacting Jeanette Childress, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-2591, e-mail Jeanette.childress@dshs.wa.gov.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Jeanette Childress, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-2591, e-mail Jeanette.childress@dshs.wa.gov.

February 12, 2014
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-01-004, filed 12/7/11, effective 1/7/12)

WAC 388-76-10000 Definitions. "Abandonment" means action or inaction by a person or entity with a duty of care for a frail elder or vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

"Abuse" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult:

(1) In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or

mental anguish, the abuse is presumed to cause physical harm, pain or mental anguish; and

(2) Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a vulnerable adult, which have the following meanings:

(a) **"Sexual abuse"** means any form of nonconsensual sexual contact, including but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual contact may include interactions that do not involve touching, including but not limited to sending a resident sexually explicit messages, or cuing or encouraging a resident to perform sexual acts. Sexual abuse includes any sexual contact between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter 71A.12 RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter 71A.12 RCW, whether or not consensual.

(b) **"Physical abuse"** means a willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or chemical or physical restraints unless the restraints are consistent with licensing requirements, and includes restraints that are otherwise being used inappropriately.

(c) **"Mental abuse"** means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a vulnerable adult from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing.

(d) **"Exploitation"** means an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another.

"Adult family home" means:

(1) A residential home in which a person or an entity is licensed to provide personal care, special care, room, and board to more than one but not more than six adults who are not related by blood or marriage to a licensed operator, resident manager, or caregiver, who resides in the home.

(2) As used in this chapter, the term "entity" includes corporations, partnerships and limited liability companies, and the term "adult family home" includes the person or entity that is licensed to operate an adult family home.

"Affiliated with an applicant" means any person listed on the application as a partner, officer, director, resident manager, or majority owner of the applying entity, or is the spouse or domestic partner of the applicant.

"Applicant" means an individual, partnership, corporation, or other entity seeking a license to operate an adult family home.

"Capacity" means the maximum number of persons in need of personal or special care who are permitted to reside in an adult family home at a given time. The capacity includes:

(1) The number of related children or adults in the home who receive personal or special care and services; plus

(2) The number of residents the adult family home may admit and retain - The resident capacity. The capacity number listed on the license is the "resident capacity."

"Caregiver" means any person eighteen years of age or older responsible for providing direct personal or special care to a resident and who is not the provider, entity representative, a student or volunteer.

"Dementia" is defined as a condition documented through the assessment process required by WAC 388-76-10335.

"Department" means the Washington state department of social and health services.

"Department case manager" means the department authorized staff person or designee assigned to negotiate, monitor, and facilitate a care and services plan for residents receiving services paid for by the department.

"Developmental disability" means:

(1) A person who meets the eligibility criteria defined by the division of developmental disabilities under WAC 388-823-0040; or

(2) A person with a severe, chronic disability which is attributable to cerebral palsy or epilepsy, or any other condition, other than mental illness, found to be closely related to mental retardation which results in impairment of general intellectual functioning or adaptive behavior similar to that of a person with mental retardation, and requires treatment or services similar to those required for these persons (i.e., autism); and

(a) The condition was manifested before the person reached age eighteen;

(b) The condition is likely to continue indefinitely; and

(c) The condition results in substantial functional limitations in three or more of the following areas of major life activities:

- (i) Self-care;
- (ii) Understanding and use of language;
- (iii) Learning;
- (iv) Mobility;
- (v) Self-direction; and
- (vi) Capacity for independent living.

"Direct supervision" means oversight by a person who has demonstrated competency in the basic training and specialty training if required, or who has been exempted from the basic training requirements and is:

(1) On the premises; and

(2) Quickly and easily available to the caregiver.

"Domestic partners" means two adults who meet the requirements for a valid state registered domestic partnership as established by RCW 26.60.030 and who have been issued a certificate of state registered domestic partnership.

"Financial exploitation" means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage. Some examples of financial exploitation are given in RCW 74.34.-020(6).

"Financial solvency" means that the applicant or provider is able to meet debts or financial obligations with some money to spare.

"Entity representative" means the individual designated by a provider who is or will be responsible for the daily operation of the adult family home and who meets the requirements of this chapter and chapter 388-112 WAC.

"Home" means adult family home.

"Imminent danger" or **"immediate threat"** means serious physical harm to or death of a resident has occurred, or there is a serious threat to the resident's life, health or safety.

"Indirect supervision" means oversight by a person who:

(1) Has demonstrated competency in the basic training and specialty training if required; or

(2) Has been exempted from the basic training requirements; and

(3) Is quickly and easily available to the care giver, but not necessarily on-site.

"Inspection" means a review by department personnel to determine the health, safety, and well-being of residents, and the adult family home's compliance with this chapter and chapters 70.128, 70.129, 74.34 RCW, and other applicable rules and regulations. The department's review may include an on-site visit.

"Management agreement" means a written, executed agreement between the adult family home and another individual or entity regarding the provision of certain services on behalf of the adult family home.

"Mandated reporter" means an employee of the department, law enforcement, officer, social worker, professional school personnel, individual provider, an employee of a facility, an employee of a social service, welfare, mental health, adult day health, adult day care, or hospice agency, county coroner or medical examiner, Christian Science practitioner, or health care provider subject to chapter 18.130 RCW. For the purpose of the definition of a mandated reporter, **"Facility"** means a residence licensed or required to be licensed under chapter 18.20 RCW (Boarding homes), chapter 18.51 RCW (Nursing homes), chapter 70.128 RCW (Adult family homes), chapter 72.36 RCW (Soldiers' homes), chapter 71A.20 RCW (Residential habilitation centers), or any other facility licensed by the department.

"Medical device" as used in this chapter, means any piece of medical equipment used to treat a resident's assessed need.

(1) A medical device is not always a restraint and should not be used as a restraint;

(2) Some medical devices have considerable safety risks associated with use; and

(3) Examples of medical devices with known safety risks when used are transfer poles, Posey or lap belts, and side rails.

"Medication administration" means giving resident medications by a person legally authorized to do so, such as a physician, pharmacist or nurse.

"Medication organizer" is a container with separate compartments for storing oral medications organized in daily doses.

"Mental illness" is defined as an Axis I or II diagnosed mental illness as outlined in volume IV of the Diagnostic and Statistical Manual of Mental Disorders (a copy is available

for review through the aging and disability services administration).

"Minimal" means violations that result in little or no negative outcome and/or little or no potential harm for a resident.

"Moderate" means violations that result in negative outcome and actual or potential harm for a resident.

"Multiple facility provider" means a provider who is licensed to operate more than one adult family home.

"Neglect" means:

(1) A pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or

(2) An act or omission that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100.

"Nurse delegation" means a registered nurse transfers the performance of selected nursing tasks to competent nursing assistants in selected situations. The registered nurse delegating the task retains the responsibility and accountability for the nursing care of the resident.

"Over-the-counter medication" is any medication that can be purchased without a prescriptive order, including but not limited to vitamin, mineral, or herbal preparations.

"Permanent Restraining Order" means a restraining order and/or order of protection issued either following a hearing, or by stipulation of the parties. A "permanent" order may be in force for a specific time period (for example, one year), after which it expires.

"Personal care services" means both physical assistance and/or prompting and supervising the performance of direct personal care tasks as determined by the resident's needs and does not include assistance with tasks performed by a licensed health professional.

"Physical restraint" means a manual method, obstacle, or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that restricts freedom of movement or access to his or her body, is used for discipline or convenience, and is not required to treat the resident's medical symptoms.

"Placement agency" is an "elder or vulnerable adult referral agency" as defined in chapter 18.330 RCW and means a business or person who receives a fee from or on behalf of a vulnerable adult seeking a referral to care services or supportive housing or who receives a fee from a care services provider or supportive housing provider because of any referral provided to or on behalf of a vulnerable adult.

"Practitioner" includes a physician, osteopathic physician, podiatric physician, pharmacist, licensed practical nurse, registered nurse, advanced registered nurse practitioner, dentist, and physician assistant licensed in the state of Washington.

"Prescribed medication" refers to any medication (legend drug, controlled substance, and over-the-counter) that is prescribed by an authorized practitioner.

"Provider" means:

(1) Any person who is licensed to operate an adult family home and meets the requirements of this chapter; or

(2) Any corporation, partnership, or limited liability company that is licensed under this chapter to operate an adult family home and meets the requirements of this chapter.

"Recurring" or "repeated" means that the department has cited the adult family home for a violation of applicable licensing laws or rules and the circumstances of (1) and (2) of this definition are present:

(1) The department previously imposed an enforcement remedy for a violation of the same section of law or rule for substantially the same problem following any type of inspection within the preceding thirty-six months; or

(2) The department previously cited a violation under the same section of law or rule for substantially the same problem following any type of inspection on two occasions within the preceding thirty-six months.

(3) If the previous violation in (1) or (2) of this definition was pursuant to a law or rule that has changed at the time of the new violation, a citation to the equivalent current law or rule section is sufficient.

"Resident" means any adult unrelated to the provider who lives in the adult family home and who is in need of care. Except as specified elsewhere in this chapter, for decision-making purposes, the term "resident" includes the resident's surrogate decision maker acting under state law.

"Resident manager" means a person employed or designated by the provider to manage the adult family home and who meets the requirements of this chapter.

"Serious" means violations that result in one or more negative outcomes and significant actual harm to residents that does not constitute imminent danger; and or, there is reasonable predictability of recurring actions, practices, situations or incidents with potential for causing significant harm to a resident.

"Severity" means the seriousness of a violation as determined by actual or potential negative outcomes for residents and subsequent actual or potential for harm. Outcomes include any negative effect on the resident's physical, mental or psychosocial well being (i.e., safety, quality of life, quality of care).

"Significant change" means:

(1) A lasting change, decline or improvement in the resident's baseline physical, mental or psychosocial status;

(2) The change is significant enough so the current assessment and/or negotiated care plan do not reflect the resident's current status; and

(3) A new assessment may be needed when the resident's condition does not return to baseline within a two week period of time.

"Special care" means care beyond personal care services as defined in this section.

"Staff" means any person who:

(1) Is employed or used by an adult family home, directly or by contract, to provide care and services to any resident.

(2) Staff must meet all of the requirements in this chapter and chapter 388-112 WAC.

"Temporary Restraining Order" means restraining order or order of protection that expired without a hearing, was dismissed following an initial hearing, or was dismissed by stipulation of the parties before an initial hearing.

"Uncorrected" means the department has cited a violation of WAC or RCW following an inspection and the violation remains uncorrected at the time of a subsequent inspection for the specific purpose of verifying whether such violation has been corrected.

"Unsupervised" means not in the presence of:

(1) Another employee or volunteer from the same business or organization; or

(2) Any relative or guardian of any of the children or developmentally disabled persons or vulnerable adults to which the employee, student or volunteer has access during the course of his or her employment or involvement with the business or organization.

"Usable floor space" means resident bedroom floor space exclusive of:

- (1) Toilet rooms;
- (2) Closets;
- (3) Lockers;
- (4) Wardrobes;
- (5) Vestibules, and

(6) The space required for the door to swing if the bedroom door opens into the resident bedroom.

"Water hazard" means any body of water over twenty-four inches in depth that can be accessed by a resident, and includes but not limited to:

- (1) In-ground, above-ground, and on-ground pools;
- (2) Hot tubs, spas;
- (3) Fixed-in-place wading pools;
- (4) Decorative water features;
- (5) Ponds; or

(6) Natural bodies of water such as streams, lakes, rivers, and oceans.

"Willful" means the deliberate or nonaccidental action or inaction by an individual that he/she knew or reasonably should have known could cause a negative outcome, including harm, injury, pain or anguish.

"Vulnerable adult" includes a person:

(1) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself;

(2) Found incapacitated under chapter 11.88 RCW;

(3) Who has a developmental disability as defined under RCW 71A.10.020;

(4) Admitted to any facility;

(5) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW;

(6) Receiving services from an individual provider; or

(7) With a functional disability who lives in his or her own home, who is directing and supervising a paid personal aide to perform a health care task as authorized by RCW 74.39.050.

AMENDATORY SECTION (Amending WSR 12-16-087, filed 7/31/12, effective 8/31/12)

WAC 388-76-10120 License—Must be denied. The adult family home license will not be granted if:

(1) The applicant has not successfully completed a department-approved forty-eight hour adult family home administration and business planning class except as provided in WAC 388-76-10064.

(2) It has been less than twenty years since the applicant surrendered or relinquished an adult family home license after receiving notice of the department's initiation of a denial, suspension, nonrenewal or revocation of the license.

(3) The applicant or the applicant's spouse, domestic partner, or any partner, officer, director, managerial employee or majority owner of the applying entity:

(a) Has a history of significant noncompliance with federal or state laws or regulations in the provision of care or services to children or vulnerable adults;

(b) Has prior violations of federal or state laws or regulations relating to residential care facilities resulting in revocation, suspension, or nonrenewal of a license or contract with the department within the past ten years;

(c) Has ((been convicted of a crime in any federal or state court, and the department determines that the crime is equivalent to a crime under subsections (3)(d), (e), (f), (g) or (h), below;

(d) Has been convicted of a "crime against children or other persons" as defined in RCW 43.43.830, unless the crime is simple assault, assault in the fourth degree, or prostitution and more than three years have passed since conviction;

(e) Has been convicted of "crimes relating to financial exploitation" as defined in RCW 43.43.830, unless the crime is theft in third degree and more than three years have passed since conviction, or unless the crime is forgery or theft in the second degree and more than five years have passed since conviction;

(f) Has been convicted of the manufacture or delivery of drugs or of possession with intent to manufacture or deliver drugs, under one of the following laws:

(i) Violation of the Imitation Controlled Substance Act (VICSA);

(ii) Violation of the Uniform Controlled Substances Act (UUCSA);

(iii) Violation of the Uniform Legend Drug Act (ULDA); or

(iv) Violation of the Uniform Precursor Drug Act (UPDA);

(g) Has been convicted of sending or bringing into the state depictions of a minor engaged in sexually explicit conduct;

(h) Has been convicted of criminal mistreatment;

(i) Has been found to have abused, neglected, exploited, or abandoned a minor or vulnerable adult by court of law or a disciplining authority, including the department of health. Examples of legal proceedings in which such findings could be made include juvenile court proceedings under chapter 13.34 RCW, domestic relations proceedings under Title 26 RCW, and vulnerable adult protection proceedings under chapter 74.34 RCW;

- (j) Has a finding of abuse or neglect of a child that is:
 - (i) Listed on the department's background check central unit report; or
 - (ii) Disclosed by the individual, except for findings made before December, 1998;
 - (k) Has a finding of abuse, neglect, financial exploitation, or abandonment of a vulnerable adult that is:
 - (i) Listed on any registry, including the department's registry;
 - (ii) Listed on the department's background check central unit report; or
 - (iii) Disclosed by the individual, except for adult protective services findings made before October, 2003) a conviction or pending criminal charge for a crime that is automatically disqualifying under chapter 388-113 WAC;
 - (d) Has one or more of the following disqualifying negative actions:
 - (i) A court has issued a permanent restraining order or order of protection, either active or expired, against the person that was based upon abuse, neglect, financial exploitation, or mistreatment of a child or vulnerable adult;
 - (ii) The person is a registered sex offender;
 - (iii) The person is on a registry based upon a final finding of abuse, neglect or financial exploitation of a vulnerable adult, unless the finding was made by adult protective services prior to October 2003;
 - (iv) A founded finding of abuse or neglect of a child was made against the person, unless the finding was made by child protective services prior to October 1, 1998;
 - (v) The individual was found in any dependency action to have sexually assaulted or exploited any child or to have physically abused any child;
 - (vi) The individual was found by a court in a domestic relations proceeding under Title 26 RCW, or under any comparable state or federal law, to have sexually abused or exploited any child or to have physically abused any child;
 - (vii) The individual has had a contract or license denied, terminated, revoked, or suspended due to abuse, neglect, financial exploitation, or mistreatment of a child or vulnerable adult; or
 - (viii) The individual has relinquished a license or terminated a contract because an agency was taking an action against the individual related to alleged abuse, neglect, financial exploitation or mistreatment of a child or vulnerable adult.

AMENDATORY SECTION (Amending WSR 10-03-064, filed 1/15/10, effective 2/15/10)

WAC 388-76-10125 License—May be denied. The adult family home license may be denied if the applicant or the applicant's spouse, domestic partner, or any partner, officer, director, managerial employee or majority owner of the applying entity:

(1) ((Has been convicted of:

(a) Simple assault, theft in third degree, assault in the fourth degree, or prostitution and more than three years has passed since conviction;

(b) Forgery or theft in the second degree and more than five years has passed since conviction;

(e) Any felony)) Has any conviction or pending criminal charge for crime that is not automatically disqualifying under chapter 388-113 WAC, but that the department determines is reasonably related to the competency of the person to be involved in the ownership or operation of an adult family home; ((or

(d) A crime involving a firearm used in commission of a felony or in any act of violence against a person.))

(2) Has abused, neglected, or financially exploited a vulnerable adult, unless denial is required under WAC 388-76-10120.

(3) Has engaged in the illegal use, sale or distribution of drugs or excessive use of alcohol or drugs without the evidence of rehabilitation;

((3) Has committed an act of domestic violence toward a family or household member;))

(4) Has been found in any final decision of a federal or state agency to have abandoned, neglected, abused or financially exploited a vulnerable adult, unless such decision requires a license denial under WAC 388-76-10120;

(5) Has had a license for the care of children or vulnerable adults denied, suspended, revoked, or not renewed. In connection with the operation of any facility for the care of children or vulnerable adults, relinquished or returned a license, or did not seek license renewal following written notification that the licensing agency intended to deny, suspend, or revoke the license, unless such action requires a license denial under WAC 388-76-10120;

(6) Has a history of prior violations of chapter 70.128 RCW or any law regulating residential care facilities that resulted in revocation, suspension, or nonrenewal of a license;

(7) Has been enjoined from operating a facility for the care and services of children or adults;

(8) Has had a medicaid or medicare provider agreement or any other contract for the care and treatment of children or vulnerable adults, terminated, cancelled, suspended, or not renewed by any public agency, including a state medicaid agency;

(9) Has been the subject of a sanction or corrective or remedial action taken by federal, state, county, or municipal officials or safety officials related to the care or treatment of children or vulnerable adults;

(10) Has obtained or attempted to obtain a license by fraudulent means or misrepresentation;

(11) Knowingly, or with reason to know, made a false statement of material fact on his or her application for a license or any data attached to the application, or in any matter involving the department;

(12) Permitted, aided, or abetted the commission of any illegal act on the adult family home premises;

(13) Willfully prevented or interfered with or failed to cooperate with any inspection, investigation, or monitoring visit made by the department, including refusal to permit authorized department representatives to interview residents or have access to their records;

(14) Failed or refused to comply with:

(a) A condition imposed on a license or a stop placement order; or

(b) The requirements of chapters 70.128, 70.129, 74.34 RCW, this chapter or other applicable laws and regulations.

(15) Misappropriated property of a resident, unless such action requires a license denial under WAC 388-76-10120;

(16) Exceeded licensed capacity in the operation of an adult family home;

(17) Operated a facility for the care of children or adults without a license or with a revoked license;

(18) ~~((In connection with the operation of any facility for the care of children or adults, relinquished or returned a license, or did not seek license renewal following written notification that the licensing agency intended to deny, suspend, or revoke the license, unless such action requires a license denial under WAC 388-76-10120;~~

((19)) When providing care to children or vulnerable adults, has had resident trust funds or assets seized by the Internal Revenue Service or a state entity for failure to pay income or payroll taxes;

((20)) (19) Failed to meet financial obligations as the obligations fell due in the normal course of owning or operating a business involved in the provision of care and services to children or vulnerable adults;

((21)) (20) Has failed to meet personal financial obligations;

((22)) (21) Interfered with a long-term care ombudsman or department staff in the performance of his or her duties;

((23)) (22) Has not demonstrated financial solvency or management experience in its currently licensed homes, or has not demonstrated the ability to meet other relevant safety, health, and operating standards pertaining to the operation of multiple homes, including ways to mitigate the potential impact of vehicular traffic related to the operation of the homes; or

((24)) (23) The home is currently licensed:

(a) As ~~((a boarding home))~~ an assisted living facility; or

(b) To provide care for children in the same home, unless:

(i) It is necessary in order to allow a resident's child(ren) to live in the same home as the resident or to allow a resident who turns eighteen to remain in the home;

(ii) The applicant provides satisfactory evidence to the department of the home's capacity to meet the needs of children and adults residing in the home; and

(iii) The total number of persons receiving care and services in the home does not exceed the number permitted by the licensed capacity of the home.

((25)) (24) Failed to give the department access to all parts of the home as authorized under RCW 70.128.090.

(25) Has demonstrated any other factors that give evidence the individual lacks the appropriate character, competence, and suitability to provide care or services to vulnerable adults.

AMENDATORY SECTION (Amending WSR 12-01-004, filed 12/7/11, effective 1/7/12)

WAC 388-76-10130 Qualifications—Provider, entity representative and resident manager. The adult family home must ensure that the provider, entity representative and

resident manager have the following minimum qualifications:

(1) Be twenty-one years of age or older;

(2) Have a United States high school diploma or general education development certificate, or any English translated government document of the following:

(a) Successful completion of government approved public or private school education in a foreign country that includes an annual average of one thousand hours of instruction a year for twelve years, or no less than twelve thousand hours of instruction;

(b) Graduation from a foreign college, foreign university, or United States community college with a two-year diploma, such as an associate's degree;

(c) Admission to, or completion of course work at a foreign or United States college or university for which credit was awarded;

(d) Graduation from a foreign or United States college or university, including award of a bachelor's degree;

(e) Admission to, or completion of postgraduate course work at, a United States college or university for which credits were awarded, including award of a master's degree; or

(f) Successful passage of the United States board examination for registered nursing, or any professional medical occupation for which college or university education was required.

(3) Completion of the training requirements that were in effect on the date they were hired or became licensed providers, including the requirements described in chapter 388-112 WAC;

(4) Have good moral and responsible character and reputation;

(5) Be literate and able to communicate in the English language, and assure that a person is on staff and available at the home who is capable of understanding and speaking English well enough to be able to respond appropriately to emergency situations and be able to read, understand and implement resident negotiated care plans.

(6) Assure that there is a mechanism to communicate with the resident in his or her primary language either through a qualified person on-site or readily available at all times, or other reasonable accommodations, such as a language line.

(7) Be able to carry out the management and administrative requirements of chapters 70.128, 70.129 and 74.34 RCW, this chapter and other applicable laws and regulations;

(8) Have completed at least one thousand hours of successful direct care experience in the previous sixty months obtained after age eighteen to vulnerable adults in a licensed or contracted setting before operating or managing a home. Individuals holding one of the following professional licenses are exempt from this requirement:

(a) Physician licensed under chapter 18.71 RCW;

(b) Osteopathic physician licensed under chapter 18.57 RCW;

(c) Osteopathic physician assistant licensed under chapter 18.57A RCW;

(d) Physician assistant licensed under chapter 18.71A RCW;

(e) Registered nurse, advanced registered nurse practitioner, or licensed practical nurse licensed under chapter 18.79 RCW.

(9) Have no disqualifying criminal convictions (listed in RCW 43.43.830 or 43.43.842 or state or federal findings of abandonment, abuse, neglect or financial exploitation) or pending criminal charges under chapter 388-113 WAC;

(10) Have none of the negative actions listed in WAC 388-76-10180;

(11) Obtain and keep valid cardiopulmonary resuscitation (CPR) and first-aid card or certificate as required in chapter 388-112 WAC; and

((11)) (12) Have tuberculosis screening to establish tuberculosis status per this chapter.

AMENDATORY SECTION (Amending WSR 10-16-082, filed 7/30/10, effective 1/1/11)

WAC 388-76-10135 Qualifications—Caregiver. The adult family home must ensure each caregiver has the following minimum qualifications:

(1) Be eighteen years of age or older;

(2) Have a clear understanding of the caregiver job responsibilities and knowledge of each resident's negotiated care plan to provide care specific to the needs of each resident;

(3) Have basic communication skills to:

(a) Be able to communicate or make provisions to communicate with the resident in his or her primary language;

(b) Understand and speak English well enough to:

(i) Respond appropriately to emergency situations; and

(ii) Read, understand and implement resident negotiated care plans.

(4) Completion of the training requirements that were in effect on the date they were hired including requirements described in chapter 388-112 WAC;

(5) Have no disqualifying criminal convictions (listed in RCW 43.43.830 or 43.43.842 or state or federal findings of abandonment, abuse, neglect or financial exploitation) or pending criminal charges under chapter 388-113 WAC;

(6) Have none of the negative actions listed in WAC 388-76-10180.

(7) Have a current valid first-aid and cardiopulmonary resuscitation (CPR) card or certificate as required in chapter 388-112 WAC; and

((7)) (8) Have tuberculosis screening to establish tuberculosis status per this chapter.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10145 Qualifications—Licensed nurse as provider, entity representative or resident manager.

The adult family home must ensure that a licensed nurse who is a provider, entity representative or resident manager has:

(1) ((No criminal convictions listed in RCW 43.43.830 or 43.43.842 or state or federal findings of abandonment, abuse, neglect or financial exploitation)) Meets all of the minimum qualifications for providers, entity representatives or resident managers listed in WAC 388-76-10130; and

(2) ((A)) Has a current valid first-aid and cardiopulmonary resuscitation (CPR) card or certificate as required in chapter 388-112 WAC.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10150 Qualifications—Assessor. (1)

The adult family home must ensure that an assessor, except for an authorized department case manager, performing an assessment for any resident meets the following qualifications:

(a) A master's degree in social services, human services, behavioral sciences or an allied field and two years social service experience working with adults who have functional or cognitive disabilities; or

(b) A bachelor's degree in social services, human services, behavioral sciences or an allied field and three years social service experience working with adults who have functional or cognitive disabilities; or

(c) Have a valid Washington state license to practice as a nurse under chapter 18.79 RCW and three years of clinical nursing experience; or

(d) Is currently a licensed physician, including an osteopathic physician, in Washington state.

(2) The home must ensure than an assessor who meets the requirements of subsections (1)(a), (b), or (c) of this section does not have unsupervised access to any resident unless the assessor has:

(a) A current criminal history background check; and

(b) Has ((not been convicted of any crime listed in RCW 43.43.830 or 43.43.842 or state or federal findings of abandonment, abuse, neglect or financial exploitation)) no disqualifying criminal convictions or pending criminal charges under chapter 388-113 WAC; and

(c) None of the negative actions listed in WAC 388-76-10180 are applicable to the assessor.

AMENDATORY SECTION (Amending WSR 12-16-087, filed 7/31/12, effective 8/31/12)

WAC 388-76-10163 Background checks—Process—Background authorization form. Before the adult family home employs, directly or by contract, a resident manager, entity representative, caregiver, or noncaregiving staff, or accepts as a caregiver any volunteer or student, or allows a household member over the age of eleven unsupervised access to residents, the home must:

(1) Require the person to complete a DSHS background authorization form; and

(2) ((Send the completed)) Submit form to the department's background check central unit, including any additional documentation and information requested by the department.

AMENDATORY SECTION (Amending WSR 12-16-087, filed 7/31/12, effective 8/31/12)

WAC 388-76-101631 Background checks—Washington state name and date of birth background check. ((After receiving the results of the Washington state name

~~and date of birth background check, the adult family home must~~) If the results of the Washington state name and date of birth background check indicate an individual has a disqualifying criminal conviction or a pending charge for a disqualifying crime under chapter 388-113 WAC, or a disqualifying negative action listed in WAC 388-76-10180 then:

(1) ((Not employ, directly or by contract,)) If the individual is a caregiver, entity representative or resident manager ((convicted of a disqualifying crime or a disqualifying finding under WAC 388-76-10180-)), the adult family home must not employ the individual, either directly or by contract; and

(2) ((Not allow)) If the individual is a household member over the age of eleven, volunteer, student or noncaregiving staff then the adult family home must not allow the individual to have unsupervised access to residents ((if they have been convicted of a disqualifying crime or disqualifying finding under WAC 388-76-10180)).

AMENDATORY SECTION (Amending WSR 12-16-087, filed 7/31/12, effective 8/31/12)

WAC 388-76-101632 Background checks—National fingerprint background check. (1) Individuals specified in WAC 388-76-10161(2) who are hired after January 7, 2012 and are not disqualified by the Washington state name and date of birth background check, must complete a national fingerprint background check and follow department procedures.

(2) After receiving the results letter of the national fingerprint background check the adult family home must not employ, directly or by contract, a caregiver, entity representative or resident manager who has been convicted of a disqualifying crime or who ((has));

(i) Has a disqualifying ((finding)) conviction or pending charge under chapter 388-113 WAC ((388-76-10180)); or

(ii) Has a disqualifying negative action listed in WAC 388-76-10180.

(3) The provider may accept a copy of a national fingerprint background check result letter and any additional information from the department's background check central unit from an individual who previously completed a national fingerprint background check through the background check central unit, provided the national fingerprint background check was completed after January 7, 2012.

AMENDATORY SECTION (Amending WSR 12-16-087, filed 7/31/12, effective 8/31/12)

WAC 388-76-10164 Background checks—Results Duty to Inform. (1) After receiving the results of the Washington state name and date of birth background check, the adult family home must:

(a) Inform the person of the results of the background checks;

(b) Inform the person that they may request a copy of the results of the background check. If requested, a copy of the background check results must be provided within ten days of the request; and

(c) Notify the department and the other appropriate licensing or certification agency of any person resigning or terminated as a result of having a disqualifying criminal con-

viction ((record)) or pending charge for a disqualifying crime under chapter 388-113 WAC, or a negative action that is disqualifying under WAC 388-76-10180.

(2) After receiving a copy of the results letter of the national fingerprint background check, the adult family home must inform the person:

(a) ((Inform the person of)) Of the ((results of the)) background check result letter; and

(b) Inform the person that they may request a copy of the results of the national fingerprint background check result letter; and ((that))

(c) That any additional information requested can only be obtained from the department's background check central unit.

AMENDATORY SECTION (Amending WSR 12-16-087, filed 7/31/12, effective 8/31/12)

WAC 388-76-10166 Background checks—Household members, noncaregiving and unpaid staff—Unsupervised access. (1) The adult family home must not allow individuals specified in WAC 388-76-10161(3) to have unsupervised access to residents until the home receives results of the Washington state name and date of birth background check from the department ((verifying that the person does not have convictions or findings described in WAC 388-76-10180)).

(2) If ((any)) the background check results show that ((the person)) an individual specified in WAC 388-76-10161 has a criminal conviction or ((finding)) pending charge for a crime that is not automatically disqualifying under chapter 388-113 WAC ((388-76-10180)), then the adult family home must:

(a) Determine whether or not the person has the character, competence and suitability to have unsupervised access to residents; and

(b) Document in writing the basis for making the decision.

(c) Nothing in this section should be interpreted as requiring the employment of any person against the better judgment of the adult family home.

AMENDATORY SECTION (Amending WSR 10-16-082, filed 7/30/10, effective 1/1/11)

WAC 388-76-10174 Background check—Disclosure of information—Sharing of background information by health care facilities. In accordance with RCW 43.43.832 a health care facility may share Washington state background check results with other health care facilities under certain circumstances. Results of the national fingerprint-based background check may not be shared. For the purposes of this section health care facility means a nursing home licensed under chapter 18.51 RCW, ((a boarding home)) an assisted living facility licensed under chapter 18.20 RCW, or an adult family home licensed under chapter 70.128 RCW.

(1) A health care facility may, upon request from another health care facility, share completed Washington state background check results only if:

(a) The health care facility sharing the background check information is reasonably known to be the person's most recent employer;

(b) No more than twelve months has elapsed between the date the person was last employed at a licensed health care facility and the date of the person's current employment application; and

(c) The background check is no more than two years old.

(d) The adult family home has no reason to believe the individual has a disqualifying criminal conviction or pending charge for a disqualifying crime under chapter 388-113 WAC, or a negative action listed in WAC 388-76-10180.

(2) If background check information is shared, the health care facility employing the subject of the check must require the applicant to sign a disclosure statement indicating that there has been no conviction or finding as described in WAC 388-76-10180 since the completion date of the most recent background check.

(3) Any health care facility that knows or has reason to believe that an applicant has or may have a disqualifying criminal conviction or ((finding as described in WAC 388-76-10180)) pending charge for a disqualifying crime under chapter 388-113 WAC, or negative action listed in WAC 388-76-10180, after the completion date of their most recent background check:

(a) Cannot rely on the applicant's previous employer's background check information; and

(b) Must request a new background check as required by this chapter.

(4) Health care facilities that share background check information shall be immune from any claim of defamation, invasion of privacy, negligence, or any other claim in connection with any dissemination of this information in accordance with this section.

(5) Health care facilities must send and receive the background check information in a manner that reasonably protects the subject's rights to privacy and confidentiality.

(6) In accordance with RCW 74.39A.210, a home that discloses information about a former or current employee to certain types of prospective employers is presumed to act in good faith and is immune from civil and criminal liability for such disclosure or its consequences.

AMENDATORY SECTION (Amending WSR 12-16-087, filed 7/31/12, effective 8/31/12)

WAC 388-76-10175 Background checks—Employment—Conditional hire—Pending results of Washington state name and date of birth background check. An adult family home may conditionally employ a person directly or by contract, pending the result of a Washington state name and date of birth background check, provided the home:

(1) Submits the Washington state name and date of birth background check no later than one business day after conditional employment;

(2) Requires the individual to sign a disclosure statement and the individual denies having ((been convicted of)) a disqualifying ((crime)) criminal conviction or pending charge for a disqualifying ((finding)) crime under chapter 388-113

WAC, or a negative action that is listed in WAC ((388-76-10180)) 388-76-10180;

(3) Does not allow the individual to have unsupervised access to any resident;

(4) Ensures direct supervision, as defined in WAC 388-76-10000, of the individual; and

(5) Ensures the individual is competent and receives the necessary training to perform assigned tasks and meets the staff training requirements under chapter 388-112 WAC.

AMENDATORY SECTION (Amending WSR 12-16-087, filed 7/31/12, effective 8/31/12)

WAC 388-76-10180 Background checks—Employment—Disqualifying information. Disqualifying negative actions. (1) The adult family home must not employ ((any one)), directly or by contract, ((who is listed in WAC 388-76-1016(2))) a caregiver, entity representative, or resident manager if ((the individual has any of the convictions, history, or findings, described below)):

((1) Has a history of significant noncompliance with federal or state laws or regulations in the provision of care or services to children or vulnerable adults;

(2) Has been convicted of a crime in any federal or state court, and the department determines that the crime is equivalent to a crime under subsections (3), (4), (5), (6), or (7), below;

(3) Has been convicted of a "crime against children or other persons" as defined in RCW 43.43.830, unless the crime is simple assault, assault in the fourth degree, or prostitution and more than three years have passed since conviction;

(4) Has been convicted of "crimes relating to financial exploitation" as defined in RCW 43.43.830, unless the crime is theft in third degree and more than three years have passed since conviction, or unless the crime is forgery or theft in the second degree and more than five years have passed since conviction;

(5) Has been convicted of the manufacture or delivery of drugs or of possession with intent to manufacture or deliver drugs under one of the following laws:

(a) Violation of the Imitation Controlled Substance Act (VICSA);

(b) Violation of the Uniform Controlled Substances Act (UUCSA);

(c) Violation of the Uniform Legend Drug Act (ULDA); or

(d) Violation of the Uniform Precursor Drug Act (UPDA);

(6) Has been convicted of sending or bringing into the state depictions of a minor engaged in sexually explicit conduct;

(7) Has been convicted of criminal mistreatment;

(8) Has been found to have abused, neglected, financially exploited, or abandoned a minor or vulnerable adult by court of law or a disciplining authority, including the department of health. Examples of legal proceedings in which such findings could be made include juvenile court proceedings under chapter 13.34 RCW, domestic relations proceeding

~~under Title 26 RCW, and vulnerable adult protection proceedings under chapter 74.34 RCW;~~

(9) Has a finding of abuse or neglect of a child that is:

(a) Listed on the department's background check central unit report; or

(b) Disclosed by the individual, except for findings made before December, 1998.

(10) Has a finding of abuse, neglect, financial exploitation, or abandonment of a vulnerable adult that is:

(a) Listed on any registry, including the department's registry;

(b) Listed on the department's background check central unit report; or

(c) Disclosed by the individual, except for adult protective services findings made before October, 2003.

(11) Pending the results of the background checks, conditional or provisional hiring may be allowed under WAC 388-76-10175 and 388-76-10176.)

(a) The caregiver, entity representative or resident manager will have unsupervised access to vulnerable adults, as defined in RCW 43.43.830; and either:

(b) The caregiver, entity representative or resident manager has a disqualifying criminal conviction or pending charge for a disqualifying crime under chapter 388-113 WAC; or

(c) The caregiver, entity representative, or resident manager has one or more of the following negative actions:

(i) A court has issued a permanent restraining order or order of protection, either active or expired, against the person that was based upon abuse, neglect, financial exploitation, or mistreatment of a child or vulnerable adult;

(ii) The individual is a registered sex offender;

(iii) The individual is on a registry based upon a final finding of abuse, neglect or financial exploitation of a vulnerable adult, unless the finding was made by adult protective services prior to October 2003;

(iv) A founded finding of abuse or neglect of a child was made against the person, unless the finding was made by child protective services prior to October 1, 1998;

(v) The individual was found in any dependency action to have sexually assaulted or exploited any child or to have physically abused any child;

(vi) The individual was found by a court in a domestic relations proceeding under Title 26 RCW, or under any comparable state or federal law, to have sexually abused or exploited any child or to have physically abused any child;

(vii) The person has had a contract or license denied, terminated, revoked, or suspended due to abuse, neglect, financial exploitation, or mistreatment of a child or vulnerable adult; or

(viii) The person has relinquished a license or terminated a contract because an agency was taking an action against the individual related to alleged abuse, neglect, financial exploitation or mistreatment of a child or vulnerable adult.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 12-16-087, filed 7/31/12, effective 8/31/12)

WAC 388-76-10181 Background checks—Employment—Nondisqualifying information. (1) If any background check results show that an employee or prospective employee has a disqualifying criminal conviction or ((finding)) pending charge for a crime that is not ((automatically)) disqualifying under chapter 388-113 WAC ((388-76-10180)), then the adult family home must:

(a) Determine whether the person has the character, competence and suitability to work with vulnerable adults in long-term care; and

(b) Document in writing the basis for making the decision, and make it available to the department upon request.

(2) Nothing in this section should be interpreted as requiring the employment of any person against the better judgment of the adult family home.

AMENDATORY SECTION (Amending WSR 12-16-087, filed 7/31/12, effective 8/31/12)

WAC 388-76-10955 Remedies—Department must impose remedies. (1) The department must impose a remedy or remedies if the department substantiates a complaint involving harm to a resident and violation of an applicable law or rule.

(2) The department must impose a remedy or remedies if the department substantiates, after licensure, that it has been less than twenty years since the adult family home voluntarily surrendered or relinquished an adult family home license in lieu of department initiated denial, suspension, nonrenewal, or revocation of a license.

(3) The department must impose a remedy or remedies if the department finds any person listed in WAC 388-76-10950:

(a) ((Has a history of significant noncompliance with federal or state laws or regulations in the provision of care or services to children or vulnerable adults;

(b) Has been convicted of a "crime against children or other persons" as defined in RCW 43.43.830, unless the crime is simple assault, assault in the fourth degree, or prostitution and more than three years have passed since conviction;

(c) Has been convicted of "crimes relating to financial exploitation" as defined in RCW 43.43.830, unless the crime is theft in the third degree and more than three years have passed since conviction, or unless the crime is forgery or theft in the second degree and more than five years have passed since conviction;

(d) Has been convicted of the manufacture or delivery of drugs or of possession with intent to manufacture or deliver drugs, under one of the following laws:

(i) Violation of the Imitation Controlled Substance Act (VICSA);

(ii) Violation of the Uniform Controlled Substances Act (UUCSA);

(iii) Violation of the Uniform Legend Drug Act (ULDA); or

(iv) Violation of the Uniform Precursor Drug Act (UPDA).

(e) Has been convicted of sending or bringing into the state depictions of a minor engaged in sexually explicit conduct;

(f) Has been convicted of criminal mistreatment;

(g) Has been found to have abused, neglected, financially exploited, or abandoned a minor or vulnerable adult by court of law or a disciplining authority, including the department of health. Examples of legal proceedings in which such findings could be made include juvenile court proceedings under chapter 13.34 RCW, domestic relations proceedings under Title 26 RCW, and vulnerable adult protection proceedings under chapter 74.34 RCW.

(h) Has a finding of abuse or neglect of a child that is:

(i) Listed on the department's background check central unit report; or

(ii) Disclosed by the individual, except for findings made before December, 1998.

(j) Has a finding of abuse, neglect, financial exploitation, or abandonment of a vulnerable adult that is:

(i) Listed on any registry, including the department's registry;

(ii) Listed on the department's background check central unit report; or

(iii) Disclosed by the individual, except for adult protective services findings made before October, 2003.

(k) Has been convicted of a crime in any federal or state court, and the department determines that the conviction is equivalent to a conviction under subsection (3)(b), (e), (d), (e) or (f), above.) (a) A court has issued a permanent restraining order or order of protection either active or expired, against the individual that was based upon abuse, neglect, financial exploitation, or mistreatment of a child or vulnerable adult;

(b) The individual is a registered sex offender;

(c) The individual is on a registry based upon a final finding of abuse, neglect or, financial exploitation of a vulnerable adult, unless the finding was made by Adult Protective Services prior to October 2003;

(d) A founded finding of abuse or neglect of a child was made against the individual, unless the finding was made by Child Protective Services prior to October 1, 1998;

(e) The individual has had a contract or license denied, terminated, revoked, or suspended due to abuse, neglect, financial exploitation, or mistreatment of a child or vulnerable adult; or

(f) The individual has relinquished a license or terminated a contract because an agency was taking an action against the individual related to alleged abuse, neglect, financial exploitation or mistreatment of a child or vulnerable adult.

WSR 14-06-010
PROPOSED RULES

**SUPERINTENDENT OF
PUBLIC INSTRUCTION**

[Filed February 20, 2014, 3:01 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-20-052.

Title of Rule and Other Identifying Information: WAC 392-122-160 State special education program—Reporting.

Hearing Location(s): Office of the Superintendent of Public Instruction, Old Capitol Building, 600 South Washington, Olympia, WA, on April 10, 2014, at 10:00 a.m.

Date of Intended Adoption: April 10, 2014.

Submit Written Comments to: Becky McLean, Old Capitol Building, P.O. Box 47200, Olympia, WA 98504-7200, e-mail becky.mclean@k12.wa.us, fax (360) 664-3683, by April 10, 2014.

Assistance for Persons with Disabilities: Contact Wanda Griffin by April 8, 2014, TTY (360) 664-3631 or (360) 725-6270.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 392-122-160 requires updating to change the age reporting requirement for special education students.

Reasons Supporting Proposal: Starting in the 2013–14 school year, the student's age will be determined by the student's birthday. Two-year-old special education students that turn three during the school year will be reported in the age 3–5 category.

Statutory Authority for Adoption: RCW 28A.150.290.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Office of superintendent of public instruction, governmental.

Name of Agency Personnel Responsible for Drafting: Becky McLean, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6306; Implementation: T. J. Kelly, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6301; and Enforcement: JoLynn Berge, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6292.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable - no small business impact; no school district fiscal impact.

A cost-benefit analysis is not required under RCW 34.05.328. The superintendent of public instruction is not subject to RCW 34.05.328 per subsection (5)(a)(i). Additionally, this rule is not a significant legislative rule per subsection (5)(c)(iii).

February 20, 2014

Randy Dorn
State Superintendent

AMENDATORY SECTION (Amending WSR 96-03-002, filed 1/3/96, effective 2/3/96)

WAC 392-122-160 State special education program—Reporting. (1) At such times as are designated by the superintendent of public instruction, each school district shall report the number of eligible special education students receiving special education according to instructions provided by the superintendent of public instruction. The disability condition shall be one of such conditions in WAC 392-122-135. The age for the purpose of determining the special education program allocation calculated in WAC 392-122-

105 shall be the age of the student (~~((as of midnight August 31 of the school year)) on the monthly enrollment count date as defined by WAC 392-121-119~~. The age reported by the school district shall be for apportionment purposes only and not for determination of a child's eligibility for access to a special education program.

(2) Each school district shall provide, upon request, such additional data as are necessary to enable the superintendent of public instruction to allocate and substantiate the school district's allocation of state special education moneys.

WSR 14-06-020
PROPOSED RULES
DEPARTMENT OF
FINANCIAL INSTITUTIONS
 (Securities Division)
 [Filed February 24, 2014, 10:55 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-02-126.

Title of Rule and Other Identifying Information: Amending chapter 460-44A WAC to make ministerial updates to account for amendments to federal Regulation D.

The securities division is proposing to make ministerial updates to chapter 460-44A WAC to reflect recent amendments to Regulation D that are not yet reflected in our rules. We also propose to update several cross-references to federal law and remove an outdated note.

Hearing Location(s): State of Washington Department of Financial Institutions, 150 Israel Road S.W., Room 319, Tumwater, WA, 98501, on April 8, 2014, at 2:00 p.m.

Date of Intended Adoption: April 9, 2014.

Submit Written Comments to: Dan Matthews, Department of Financial Institutions, Securities Division, P.O. Box 9033, Olympia, WA 98507-9033, e-mail dan.matthews@dfi.wa.gov, fax (360) 704-6496, by April 7, 2014.

Assistance for Persons with Disabilities: Contact Carolyn Hawkey, P.O. Box 9033, Olympia, WA 98507-9033, TTY (360) 664-8126 or (360) 902-8824.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: On July 10, 2013, the Securities and Exchange Commission adopted two final rules through SEC Release Nos. 33-9414 and 33-9415, with an effective date of September 23, 2013. These rules impact the existing exemption under federal Rule 506(b) and create a new exemption in federal Rule 506(c). Further, the text of the rules in WAC 460-44A-500 through 460-44A-508 is largely based upon the text of federal Regulation D. Regulation D has been the subject of a number of minor revisions that are not yet reflected in our rules. The division is proposing to make updates to chapter 460-44A WAC in order to reflect the recent amendments to federal Rule 506 and to more closely align our rules with federal Regulation D. We are also proposing to update several cross-references to federal law and remove an outdated note.

The division is proposing to amend WAC 460-44A-050, 460-44A-500, 460-44A-501, 460-44A-502, 460-44A-503, and 460-44A-506.

Reasons Supporting Proposal: The proposed rule making is beneficial to regulated entities, local governments, and small businesses that rely on the WAC. By engaging in this rule making, the government and the public would be benefited through more uniform and accurate regulations.

Statutory Authority for Adoption: RCW 21.20.450, 21.20.320 (1) and (17).

Statute Being Implemented: Chapter 21.20 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of financial institutions, governmental.

Name of Agency Personnel Responsible for Drafting: Dan Matthews, 150 Israel Road S.W., Tumwater, WA 98501, (360) 902-8760; Implementation: Scott Jarvis, Director, 150 Israel Road S.W., Tumwater, WA 98501, (360) 902-8760; and Enforcement: William M. Beatty, Director [of] Securities, 150 Israel Road S.W., Tumwater, WA 98501, (360) 902-8760.

No small business economic impact statement has been prepared under chapter 19.85 RCW. If any costs are borne by businesses in connection with the proposed rules, these costs will be no more than minor. As such, the agency is not required to prepare a small business economic impact statement under RCW 19.85.030.

A cost-benefit analysis is not required under RCW 34.05.328. The department of financial institutions is not one of the agencies listed in RCW 34.05.328.

February 24, 2014
 Scott Jarvis
 Director

AMENDATORY SECTION (Amending WSR 98-18-032, filed 8/26/98, effective 9/26/98)

WAC 460-44A-050 Isolated transactions—Sales not involving a public offering. (1) An "isolated transaction" within the meaning of RCW 21.20.320(1) includes:

(a) Subject to the limitation of (b) of this subsection, any sale of an outstanding security by or on behalf of a person not in control of the issuer or controlled by the issuer or under common control with the issuer and not involving a distribution;

(b) Any sale satisfying the requirements of (a) of this subsection that is effected through a broker-dealer, provided that it is one of not more than three such transactions effected by or through the broker-dealer in this state during the prior twelve months;

(c) Any sale of an outstanding security by or on behalf of a person in control of the issuer or controlled by the issuer or under common control with the issuer if the sale is effected pursuant to:

(i) Brokers' transactions in accordance with section 4 (a)(4) of the Securities Act of 1933 and Rule 144 thereunder; or

(ii) Any other transaction not effected through a broker-dealer and not involving a distribution, if the sale, including

any other sales of securities of the same class during the prior twelve months inside or outside this state by the person, does not exceed 1% of the outstanding shares or units of that class; or

(d) Any sale of a security by or on behalf of an issuer that is one of not more than three such transactions inside or outside this state during the prior twenty-four months.

An exemption provided by (a), (b), (c), or (d) of this subsection shall not be available for any offering made in a manner inconsistent with the limitations set forth in (a), (b), (c), or (d) of this subsection, respectively.

(2) "Sales not involving a public offering," within the meaning of RCW 21.20.320(1), is interpreted by the director in a manner consistent with section 4 (a)(2) of the federal Securities Act of 1933 and Securities and Exchange Commission Securities Act Release No. 4552.

(Note: Pursuant to RCW 21.20.320(1), the director has promulgated a rule "establishing a nonpublic offering exemption" at WAC 460-44A-506.)

AMENDATORY SECTION (Amending WSR 08-16-072, filed 7/31/08, effective 9/15/08)

WAC 460-44A-500 Preliminary notes. (1) The rules of WAC 460-44A-501 through 460-44A-508 relate to transactions exempted from the registration requirements of the Federal Securities Act of 1933 that are also exempted or preempted from RCW 21.20.140. WAC 460-44A-504 is an exemption from registration for offerings exempted under Securities and Exchange Commission Rule 504 or Rule 147. WAC 460-44A-505 is an exemption from registration for offerings exempted under Securities and Exchange Commission Rule 505. WAC 460-44A-506 establishes certain conditions for offerings exempted under Securities and Exchange Commission Rule 506. Unless expressly provided otherwise, such transactions are not exempt from anti-fraud, civil liability, or other provisions of the federal and state securities laws. Issuers are reminded of their obligation to provide such further material information, if any, as may be necessary to make the information required under these rules, in light of the circumstances under which it is furnished, not misleading.

(2) Attempted compliance with the exemption of WAC 460-44A-504, 460-44A-505, or 460-44A-506 does not act as an exclusive election; the issuer can also claim the availability of any other applicable exemption.

(3) These rules are available only to the issuer of the securities and not to any affiliate of that issuer or to any other person for resale of the issuer's securities. The rules provide an exemption only for the transactions in which the securities are offered or sold by the issuer, not for the securities themselves.

(4) In any proceeding involving the rules in WAC 460-44A-501 through 460-44A-508, the burden of proving the exemption, an exception from a definition or condition, or preemption, is upon the person claiming it.

(5) For offerings commenced but not completed prior to the amendment of WAC 460-44A-501 through 460-44A-508, issuers may opt to follow the rules in effect at the date of filing notice of the offering.

(6) Securities offered and sold outside the United States in accordance with Securities and Exchange Commission Regulation S need not be registered under chapter 21.20 RCW. Regulation S may be relied upon for such offers and sales even if coincident offers and sales are made in accordance with Regulation D and WAC 460-44A-501 through 460-44A-508 inside the United States. Thus, for example, persons who are offered and sold securities in accordance with Regulation S would not be counted in the calculation of the number of purchasers under Regulation D and WAC 460-44A-501 through 460-44A-508. Similarly proceeds from such sales would not be included in the aggregate offering price. The provisions of this subsection, however, do not apply if the issuer elects to rely solely on Regulation D for offers or sales to persons made outside the United States.

(7) These rules have been amended in recognition of the amendment of Regulation D by the Securities and Exchange Commission (SEC) to authorize the filing of Form D in electronic format with the SEC through the Electronic Data Gathering, Analysis, and Retrieval System (EDGAR) in accordance with EDGAR rules set forth in Regulation S-T (17 C.F.R. Part 232) as described in Securities and Exchange Commission Securities Act Release No. 8891. WAC 460-44A-503 (1)(b) authorizes an issuer to file ((Temporary Form D (17 C.F.R. 239.500T) together with an executed uniform consent to service of process on Form U-2 while Temporary Form D remains in effect or)) a copy of the notice of sales on Form D filed electronically or in paper format with the SEC (17 C.F.R. 239.500) until an electronic filing system acceptable to the administrator of securities of the department of financial institutions is implemented that permits the electronic filing of Form D with the administrator or his or her designee.

AMENDATORY SECTION (Amending WSR 12-13-043, filed 6/13/12, effective 7/14/12)

WAC 460-44A-501 Definitions and terms. As used in rules WAC 460-44A-501 through 460-44A-508, the following terms shall have the meaning indicated:

(1) "Accredited investor" shall mean any person who comes within any of the following categories, or who the issuer reasonably believes comes within any of the following categories, at the time of the sale of the securities to that person:

(a) Any bank as defined in section 3 (a)(2) of the Securities Act of 1933, or any savings and loan association or other institution as defined in section 3 (a)(5)(A) of the Securities Act of 1933 whether acting in its individual or fiduciary capacity; any broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934; any insurance company as defined in section 2 (a)(13) of the Securities Act of 1933; any investment company registered under the Investment Company Act of 1940 or a business development company as defined in section 2 (a)(48) of that act; any small business investment company licensed by the U.S. Small Business Administration under section 301 (c) or (d) of the Small Business Investment Act of 1958; any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivi-

sions, for the benefit of its employees, if such plan has total assets in excess of \$5,000,000; any employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such act, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of \$5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors;

(b) Any private business development company as defined in section 202 (a)(22) of the Investment Advisers Act of 1940;

(c) Any organization described in section 501 (c)(3) of the Internal Revenue Code, corporation, Massachusetts or similar business trust, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of \$5,000,000;

(d) Any director, executive officer, or general partner of the issuer of the securities being offered or sold, or any director, executive officer, or general partner of a general partner of that issuer;

(e) Any natural person whose individual net worth, or joint net worth with that person's spouse, exceeds \$1,000,000.

(i) Except as provided in (e)(ii) of this subsection, for purposes of calculating net worth under (e) of this subsection:

(A) The person's primary residence shall not be included as an asset;

(B) Indebtedness that is secured by the person's primary residence, up to the estimated fair market value of the primary residence at the time of the sale of securities, shall not be included as a liability (except that if the amount of such indebtedness outstanding at the time of the sale of securities exceeds the amount outstanding sixty days before such time, other than as a result of the acquisition of the primary residence, the amount of such excess shall be included as a liability); and

(C) Indebtedness that is secured by the person's primary residence in excess of the estimated fair market value of the primary residence at the time of the sale of securities shall be included as a liability.

(ii) Paragraph (e)(i) of this subsection will not apply to any calculation of a person's net worth made in connection with a purchase of securities in accordance with a right to purchase such securities, provided that:

(A) Such right was held by the person on July 20, 2010;

(B) The person qualified as an accredited investor on the basis of net worth at the time the person acquired such right; and

(C) The person held securities of the same issuer, other than such right, on July 20, 2010;

(f) Any natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person's spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;

(g) Any trust, with total assets in excess of \$5,000,000, not formed for the specific purpose of acquiring the securities

offered, whose purchase is directed by a sophisticated person as described in 17 C.F.R. Sec. 230.506 (b)(2)(ii); and

(h) Any entity in which all of the equity owners are accredited investors.

(2) "Affiliate" an "affiliate" of, or person "affiliated" with, a specified person shall mean a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified;

(3) "Aggregate offering price" shall mean the sum of all cash, services, property, notes, cancellation of debt, or other consideration to be received by an issuer for issuance of its securities. Where securities are being offered for both cash and noncash consideration, the aggregate offering price shall be based on the price at which the securities are offered for cash. Any portion of the aggregate offering price attributable to cash received in a foreign currency shall be translated into United States currency at the currency exchange rate in effect at a reasonable time prior to or on the date of the sale of the securities. If securities are not offered for cash, the aggregate offering price shall be based on the value of the consideration as established by bona fide sales of that consideration made within a reasonable time, or, in the absence of sales, on the fair value as determined by an accepted standard. Such valuations of noncash consideration must be reasonable at the time made;

(4) "Business combination" shall mean any transaction of the type specified in paragraph (a) of Rule 145 under the Securities Act of 1933 and any transaction involving the acquisition by one issuer, in exchange for all or a part of its own or its parent's stock, of stock of another issuer if, immediately after the acquisition, the acquiring issuer has control of the other issuer (whether or not it had control before the acquisition);

(5) "Calculation of number of purchasers." For purposes of calculating the number of purchasers under WAC 460-44A-504 and 460-44A-505 the following shall apply:

(a) The following purchasers shall be excluded:

(i) Any relative, spouse or relative of the spouse of a purchaser who has the same ((principal)) primary residence as the purchaser;

(ii) Any trust or estate in which a purchaser and any of the persons related to him as specified in WAC 460-44A-501 (5)(a)(i) or (iii) collectively have more than fifty percent of the beneficial interest (excluding contingent interests);

(iii) Any corporation or other organization of which a purchaser and any of the persons related to him as specified in WAC 460-44A-501 (5)(a)(i) or (ii) collectively are beneficial owners of more than fifty percent of the equity securities (excluding directors' qualifying shares) or equity interests; and

(iv) Any accredited investor.

(b) A corporation, partnership or other entity shall be counted as one purchaser. If, however, that entity is organized for the specific purpose of acquiring the securities offered and is not an accredited investor under WAC 460-44A-501 (1)(h), then each beneficial owner of equity securities or equity interests in the entity shall count as a separate purchaser for all provisions of WAC 460-44A-501 through

460-44A-508, except to the extent provided in (a) of this subsection.

(c) A noncontributory employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974 shall be counted as one purchaser where the trustee makes all investment decisions for the plan.

Note: The issuer must satisfy all the other provisions of WAC 460-44A-501 through 460-44A-505 for all purchasers whether or not they are included in calculating the number of purchasers. Clients of an investment adviser or customers of a broker-dealer shall be considered the "purchasers" under WAC 460-44A-501 through 460-44A-505 regardless of the amount of discretion given to the investment adviser or broker-dealer to act on behalf of the client or customer.

(6) "Executive officer" shall mean the president, any vice-president in charge of a principal business unit, division or function (such as sales, administration or finance), or any other officer who performs a policy making function, or any other person who performs similar policy making functions for the issuer. Executive officers of subsidiaries may be deemed executive officers of the issuer if they perform such policy making functions for the issuer;

(7) "Issuer" as defined in Section 2 (a)(4) of the Securities Act of 1933 or RCW 21.20.005 shall apply, except that in the case of a proceeding under the Federal Bankruptcy Code (11 U.S.C. 101 et seq.), the trustee or debtor in possession shall be considered the issuer in an offering under a plan or reorganization, if the securities are to be issued under the plan;

(8) "Purchaser representative" shall mean any person who satisfies all of the following conditions or who the issuer reasonably believes satisfies all of the following conditions:

(a) Is not an affiliate, director, officer or other employee of the issuer, or beneficial owner of ten percent or more of any class of the equity securities or ten percent or more of the equity interest in the issuer, except where the purchaser is:

(i) A relative of the purchaser representative by blood, marriage or adoption and not more remote than a first cousin;

(ii) A trust or estate in which the purchaser representative and any person related to him as specified in WAC 460-44A-501 (8)(a)(i) or (iii) collectively have more than fifty percent of the beneficial interest (excluding contingent interest) or of which the purchaser representative serves as trustee, executor, or in any similar capacity; or

(iii) A corporation or other organization of which the purchaser representative and any persons related to him as specified in WAC 460-44A-501 (8)(a)(i) or (ii) collectively are the beneficial owners of more than 50 percent of the equity securities (excluding directors' qualifying shares) or equity interests;

(b) Has such knowledge and experience in financial and business matters that he is capable of evaluating, alone, or together with other purchaser representatives of the purchaser, or together with the purchaser, the merits and risks of the prospective investment;

(c) Is acknowledged by the purchaser in writing, during the course of the transaction, to be his purchaser representative in connection with evaluating the merits and risks of the prospective investment; and

(d) Discloses to the purchaser in writing a reasonable time prior to the sale of securities to that purchaser any material relationship between himself or his affiliates and the issuer or its affiliates that then exists, that is mutually understood to be contemplated, or that has existed at any time during the previous two years, and any compensation received or to be received as a result of such relationship.

Note 1: A person acting as a purchaser representative should consider the applicability of the registration and anti-fraud provisions relating to broker-dealers under chapter 21.20 RCW and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq., as amended) and relating to investment advisers under chapter 21.20 RCW and the Investment Advisers Act of 1940.

Note 2: The acknowledgment required by paragraph (8)(c) and the disclosure required by paragraph (8)(d) of this WAC 460-44A-501 must be made with specific reference to each prospective investment. Advance blanket acknowledgment, such as for "all securities transactions" or "all private placements," is not sufficient.

Note 3: Disclosure of any material relationships between the purchaser representative or his affiliates and the issuer or its affiliates does not relieve the purchaser representative of his obligation to act in the best interest of the purchaser.

AMENDATORY SECTION (Amending WSR 08-16-072, filed 7/31/08, effective 9/15/08)

WAC 460-44A-502 General conditions to be met. The following conditions shall be applicable to offers and sales made under WAC 460-44A-504 or 460-44A-505:

(1) "Integration." All sales that are part of the same offering under these rules must meet all of the terms and conditions of these rules. Offers and sales that are made more than six months before the start of an offering or are made more than six months after completion of an offering, will not be considered part of that offering, so long as during those six month periods there are no offers or sales of securities by or for the issuer that are of the same or a similar class as those offered or sold under these rules, other than those offers or sales of securities under an employee benefit plan.

Note: The term "offering" is not defined in the securities acts. If the issuer offers or sells securities for which the safe harbor rule in WAC 460-44A-502(1) is unavailable, the determination as to whether separate sales of securities are part of the same offering (i.e. are considered "integrated") depends on the particular facts and circumstances. Generally, transactions otherwise meeting the requirements of an exemption will not be integrated with simultaneous offerings being made outside the United States in compliance with Securities and Exchange Commission Regulation S.

The following factors should be considered in determining whether offers and sales should be integrated for purposes of the exemptions under these rules:

(a) Whether the sales are part of a single plan of financing;

(b) Whether the sales involve issuance of the same class of securities;

(c) Whether the sales have been made at or about the same time;

(d) Whether the same type of consideration is received; and

(e) Whether the sales are made for the same general purpose.

See Securities and Exchange Commission Release No. 33-4552 (November 6, 1962).

(2) Information requirements.

(a) When information must be furnished.

If the issuer sells securities under WAC 460-44A-505 to any purchaser that is not an accredited investor, the issuer shall furnish the information specified in WAC 460-44A-502 (2)(b) to such purchaser a reasonable time prior to sale. The issuer is not required to furnish the specified information to purchasers when it sells securities under WAC 460-44A-504, or to any accredited investor.

Note: When an issuer provides information to investors pursuant to WAC 460-44A-502 (2)(a), it should consider providing such information to accredited investors as well, in view of the anti-fraud provisions of the federal and state securities laws.

(b) Type of information to be furnished.

(i) If the issuer is not subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934, at a reasonable time prior to the sale of securities the issuer shall furnish to the purchaser the following information, to the extent material to an understanding of the issuer, its business, and the securities being offered:

(A) Nonfinancial statement information. If the issuer is eligible to use Regulation A, the same kind of information as would be required in Part II of Form 1-A, 17 C.F.R. Sec. 239.90. If the issuer is not eligible to use Regulation A, the same kind of information as required in Part I of a registration statement filed under the Securities Act on the form that the issuer would be entitled to use.

(B) Financial statement information.

(I) Offerings up to \$2,000,000. The information required in ((Item 310 of Regulation S-B)) Article 8 of Regulation S-X, 17 C.F.R. Sec. ((228.310)) 210.8, except that only the issuer's balance sheet, which shall be dated within 120 days of the start of the offering, must be audited.

(II) Offerings up to \$((5,000,000)) 7,500,000. The financial statement information required in Form ((SB-2)) S-1, 17 C.F.R. Sec. 239.10. If an issuer, other than a limited partnership, cannot obtain audited financial statements without unreasonable effort or expense, then only the issuer's balance sheet, which shall be dated within 120 days of the start of the offering, must be audited. If the issuer is a limited partnership and cannot obtain the required financial statements without unreasonable effort or expense, it may furnish financial statements that have been prepared on the basis of federal income tax requirements and examined and reported on in accordance with generally accepted auditing standards by an independent public or certified accountant.

(C) If the issuer is a foreign private issuer eligible to use Form 20-F, the issuer shall disclose the same kind of information required to be included in a registration statement filed under the Securities Act of 1933 on the form that the issuer would be entitled to use. The financial statements need be certified only to the extent required by (2)(b)(i)(B)(I) or (II) of this subsection, as appropriate.

(ii) If the issuer is subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934,

at a reasonable time prior to the sale of securities the issuer shall furnish to the purchaser the information required by Securities and Exchange Commission Regulation D, Rule 502 (b)(2)(ii) as appropriate.

(iii) Exhibits required to be filed with the administrator of securities or the securities and exchange commission as part of a registration statement or report, other than an annual report to shareholders or parts of that report incorporated by reference in a Form 10-K and Form 10-KSB report, need not be furnished to each purchaser that is not an accredited investor if the contents of material exhibits are identified and such exhibits are made available to a purchaser, upon his written request, a reasonable time prior to his purchase.

(iv) At a reasonable time prior to the sale of securities to any purchaser that is not an accredited investor in a transaction under WAC 460-44A-505, the issuer shall furnish to the purchaser a brief description in writing of any material written information concerning the offering that has been provided by the issuer to any accredited investor but not previously delivered to such unaccredited purchaser. The issuer shall furnish any portion or all of this information to the purchaser, upon his written request a reasonable time prior to his purchase.

(v) The issuer shall also make available to each purchaser at a reasonable time prior to his purchase of securities in a transaction under WAC 460-44A-505 the opportunity to ask questions and receive answers concerning the terms and conditions of the offering and to obtain any additional information which the issuer possesses or can acquire without unreasonable effort or expense that is necessary to verify the accuracy of information furnished under WAC 460-44A-502 (2)(b)(i) or (ii).

(vi) For business combinations or exchange offers, in addition to information required by Form S-4, 17 C.F.R. Sec. 239.25, the issuer shall provide to each purchaser at the time the plan is submitted to security holders, or, with an exchange, during the course of the transaction and prior to sale, written information about any terms or arrangements of the proposed transactions that are materially different from those for all other security holders. For purposes of this subsection, an issuer which is not subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934 may satisfy the requirements of Part I.B. or C. of Form S-4 by compliance with (b)(i) of this subsection.

(vii) At a reasonable time prior to the sale of securities to any purchaser that is not an accredited investor in a transaction under WAC 460-44A-505, the issuer shall advise the purchaser of the limitations on resale in the manner contained in subsection (4)(b) of this section. Such disclosure may be contained in other materials required to be provided by this paragraph.

(3) Limitation on manner of offering. Neither the issuer nor any person acting on its behalf shall offer or sell the securities by any form of general solicitation or general advertising, including, but not limited to, the following:

(a) Any advertisement, article, notice or other communication published in any newspaper, magazine, or similar media or broadcast over television or radio; and

(b) Any seminar or meeting whose attendees have been invited by any general solicitation or general advertising.

Provided, however, that publication by an issuer of a notice in accordance with 17 C.F.R. Sec. 230.135c or filing with the Securities and Exchange Commission by an issuer of a notice of sales on Form D (17 C.F.R. 239.500) in which the issuer has made a good faith and reasonable attempt to comply with the requirements of such form, shall not be deemed to constitute general solicitation or general advertising for purposes of this section: Provided further, that, if the requirements of 17 C.F.R. Sec. 230.135e are satisfied, providing any journalist with access to press conferences held outside of the United States, to meetings with issuer or selling security holder representatives conducted outside of the United States, or to written press-related materials released outside the United States, at or in which a present or proposed offering of securities is discussed, will not be deemed to constitute general solicitation or general advertising for purposes of this section.

(4) Limitations on resale. Securities acquired in a transaction under WAC 460-44A-501 through 460-44A-505 shall have the status of restricted securities acquired in a nonpublic offering transaction under section 4 (a)(2) of the Securities Act of 1933 and RCW 21.20.320(1) and cannot be resold without registration under the Securities Act of Washington or an exemption therefrom. The issuer shall exercise reasonable care to assure that the securities are restricted and that the purchasers of the securities are not underwriters within the meaning of section 2 (a)(11) of the Securities Act of 1933, which reasonable care may be demonstrated by the following:

(a) Reasonable inquiry to determine if the purchaser is acquiring the securities for himself or for other persons;

(b) Written disclosure to each purchaser prior to sale that the securities have not been registered under the Securities Act of 1933, and the Washington administrator of securities has not reviewed or recommended the offering or offering circular and the securities have not been registered under the Securities Act of Washington, chapter 21.20 RCW, and, therefore, cannot be resold unless they are registered under the Securities Act of 1933 and the Securities Act of Washington chapter 21.20 RCW or unless an exemption from registration is available; and

(c) Placement of a legend on the certificate or other document that evidences the securities stating that the securities have not been registered under the Securities Act of 1933 and the Securities Act of Washington chapter 21.20 RCW and setting forth or referring to the restrictions on transferability and sale of the securities.

(d) A written disclosure or legend will be deemed to comply with the provisions of WAC 460-44A-502 (4)(b) or (c) if it complies with the North American Securities Administrators Association Uniform Disclosure Guidelines on Legends, NASAA Reports CCH Para. 1352 (1989).

While taking these actions will establish the requisite reasonable care, it is not the exclusive method to demonstrate such care. Other actions by the issuer may satisfy this provision. In addition, WAC 460-44A-502 (2)(b)(vii) requires the delivery of written disclosure of the limitations on resale to investors in certain instances.

AMENDATORY SECTION (Amending WSR 09-24-078, filed 11/30/09, effective 12/31/09)

WAC 460-44A-503 Filing of notice and payment of fee. (1) An issuer offering or selling securities in reliance on WAC 460-44A-504, 460-44A-505, or 460-44A-506 shall file with the administrator of securities of the department of financial institutions or his or her designee a notice and pay a filing fee as follows:

(a)(i)(A) For an offering of a security in reliance upon the Securities Act of 1933, Regulation D, Rule 230.506(b) and RCW 21.20.327(2) and 21.20.320(1), the issuer shall file a notice on Securities and Exchange Commission Form D marking Rule 506(b) and pay a filing fee of three hundred dollars no later than fifteen days after the first sale of such securities in the state of Washington, unless the end of that period falls on a Saturday, Sunday or holiday, in which case the due date would be the first business day following.

(B) For an offering of a security in reliance upon the Securities Act of 1933, Regulation D, Rule 230.506(c) and RCW 21.20.327(2), the issuer shall file a notice on Securities and Exchange Commission Form D marking Rule 506(c) and pay a filing fee of three hundred dollars no later than fifteen days after the first sale of such securities in the state of Washington, unless the end of that period falls on a Saturday, Sunday or holiday, in which case the due date would be the first business day following.

(C) For an offering in reliance on Securities and Exchange Commission Rule 505 and WAC 460-44A-505, the issuer shall file the initial notice on Securities and Exchange Commission Form D marking Rule 505 and pay a filing fee of three hundred dollars no later than fifteen days after the first sale of securities in the state of Washington which results from an offer being made in reliance upon WAC 460-44A-505, unless the end of that period falls on a Saturday, Sunday or holiday, in which case the due date would be the first business day following;

((C)) (D) For an offering in reliance on Securities and Exchange Commission Rule 504 and WAC 460-44A-504, the issuer shall file the initial notice on Securities and Exchange Commission Form D marking Rule 504 and pay a filing fee of fifty dollars no later than ten business days (or such lesser period as the administrator may allow) prior to receipt of consideration or the delivery of a signed subscription agreement by an investor in the state of Washington which results from an offer being made in reliance upon WAC 460-44A-504;

((D)) (E) For an offering in reliance on Securities and Exchange Commission Rule 147 and WAC 460-44A-504, the issuer shall file the initial notice on Washington Securities Division Form WAC 460-44A-504/Rule 147 and pay a filing fee of fifty dollars no later than ten business days (or such lesser period as the administrator may allow) prior to receipt of consideration or the delivery of a signed subscription agreement by an investor in the state of Washington which results from an offer being made in reliance on the exemption of WAC 460-44A-504;

(ii) The issuer shall include with the initial notice a statement indicating:

(A) The date of first sale of securities in the state of Washington; or

(B) That sales have yet to occur in the state of Washington.

(b) The issuer shall file with the administrator or his or her designee such other notices on Form D as are required to be filed with the Securities and Exchange Commission. For purposes of this section, the initial notice on Securities and Exchange Commission Form D shall consist of ((either the ~~Temporary Form D (17 C.F.R. 239.500T) as adopted by the Securities and Exchange Commission together with an executed uniform consent to service of process on Form U-2 while Temporary Form D remains in effect from September 15, 2008 through March 15, 2009, or~~) the notice of sales on Form D filed in paper or electronic format with the Securities and Exchange Commission through the Electronic Data Gathering, Analysis, and Retrieval System (EDGAR) in accordance with EDGAR rules set forth in Regulation S-T (17 C.F.R. Part 232) ((and in effect on September 15, 2008)).

(c) If the issuer files a notice of sales on Temporary Form D or a copy of the notice of sales on Form D filed in electronic format with the Securities and Exchange Commission, it shall either be manually signed by a person duly authorized by the issuer or a photocopy of a manually signed copy.

(d) By filing for the exemption of WAC 460-44A-504 or 460-44A-505, the issuer undertakes to furnish to the administrator, upon request, the information to be furnished or furnished by the issuer under WAC 460-44A-502 (2)(b) or otherwise to any purchaser that is not an accredited investor. Failure to submit the information in a timely manner will be a ground for denial or revocation of the exemption of WAC 460-44A-504 or 460-44A-505.

(2) An issuer may file an amendment to a previously filed notice of sales on Form D at any time.

(3) An issuer must file an amendment to a previously filed notice of sales on Form D for an offering:

(a) To correct a material mistake of fact or error in the previously filed notice of sales on Form D, as soon as practicable after discovery of the mistake or error;

(b) To reflect a change in the information provided in the previously filed notice of sales on Form D, as soon as practicable after the change, except that no amendment is required to reflect a change that occurs after the offering terminates or a change that occurs solely in the following information:

(i) The address or relationship of the issuer of a related person identified in response to Item 3 of the notice of sales on Form D;

(ii) An issuer's revenues or aggregate net asset value;

(iii) The minimum investment amount, if the change is an increase, or if the change, together with all other changes in that amount since the previously filed notice of sales on Form D, does not result in a decrease of more than ten percent;

(iv) Any address or state(s) of solicitation shown in response to Item 12 of the notice of sales on Form D;

(v) The total offering amount, if the change is a decrease, or if the change, together with all other changes in that amount since the previously filed notice of sales on Form D, does not result in an increase of more than ten percent;

(vi) The amount of securities sold in the offering or the amount remaining to be sold;

(vii) The number of nonaccredited investors who have invested in the offering, as long as the change does not increase the number to more than thirty-five;

(viii) The total number of investors who have invested in the offering;

(ix) The amount of sales commissions, finders' fees or use of proceeds for payments to executive officers, directors or promoters, if the change is a decrease, or if the change, together with all other changes in that amount since the previously filed notice of sales on Form D, does not result in an increase of more than ten percent; and

(c) Annually, on or before the first anniversary of the filing of the notice of sales on Form D or the filing of the most recent amendment to the notice of sales on Form D, if the offering is continuing at that time.

(4) An issuer that files an amendment to a previously filed notice of sales on Form D must provide current information in response to all requirements of the notice of sales on Form D regardless of why the amendment is filed.

((5) Amendments to notices filed before September 15, 2008 and to notices filed on or after September 15, 2008 in paper format using ~~Temporary Form D (17 C.F.R. 239.500T)~~ must use ~~Temporary Form D~~ but need only report the issuer's name and the information required by Part C and any material change in the facts from those set forth in Parts A and B.))

AMENDATORY SECTION (Amending WSR 08-16-072, filed 7/31/08, effective 9/15/08)

WAC 460-44A-506 Conditions pertaining to the offer and sale of securities pursuant to Rule 506 of the Securities Act of 1933. (1) Offers and sales of securities by an issuer in compliance with the Securities Act of 1933, Regulation D, Rules 230.501 through 230.503; 230.506; and 230.508 as made effective in Release No. 33-6389, and as amended in Release Nos. 33-6437, 33-6663, 33-6758, 33-6825, 33-6863, 33-6949, 33-6996, ((and)) 33-8891, 33-9414, and 33-9415 shall satisfy the conditions in subsections (2) and (3) of this section.

(2) To qualify for preemption under this section, offers and sales must satisfy all the terms and conditions of WAC 460-44A-503.

Note: In order to comply with this section the issuer must comply with the provisions of Rule 506 (17 C.F.R. Sec. 230.506) of the Federal Securities and Exchange Commission.

(3) Offers or sales which are exempted under this section may not be combined in the same offering with offers or sales exempted under any other rule or section of chapter 21.20 RCW; however, nothing in this limitation shall act as an election. Should for any reason an offering fail to comply with all of the conditions for this section, the issuer may claim the availability of any other applicable exemption.

WSR 14-06-055**PROPOSED RULES****OLYMPIC COLLEGE**

[Filed February 27, 2014, 3:13 p.m.]

Continuance of WSR 14-03-100.

Preproposal statement of inquiry was filed as WSR 13-21-120.

Title of Rule and Other Identifying Information: Olympic College nondiscrimination policy.

Date of Intended Adoption: March 18, 2014.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the revisions is to bring the policy into compliance with federal legislation.

Statutory Authority for Adoption: Chapter 28B.50 RCW.

Statute Being Implemented: Chapter 28B.50 RCW.

February 27, 2014

Thomas Oliver

Rules Coordinator

WSR 14-06-061**PROPOSED RULES****CHARTER SCHOOL COMMISSION**

[Filed February 28, 2014, 9:52 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-22-033.

Title of Rule and Other Identifying Information: Title 108 WAC, Charter school commission; chapter 108-40 WAC, Charter school oversight and corrective action policy, renewal and nonrenewal policy, revocation policy, and termination protocol; and chapter 108-50 WAC, Public records.

Hearing Location(s): Portland Avenue Community Center, 3513 Portland Avenue, Tacoma, WA 985404 [98404], on Thursday, April 24, 2014, at 10:10 a.m.-11:10 a.m.

Date of Intended Adoption: Thursday, May 22, 2014.

Submit Written Comments to: Colin Pippin-Timco, P.O. Box 40996, Olympia, WA 98504-0996, e-mail colin.pippin-timco@charterschool.wa.gov, by Tuesday, April 22, 2014.

Assistance for Persons with Disabilities: Contact Colin Pippin-Timco by Tuesday, April 22, 2014, TTY (800) 833-6388 or (360) 725-5511.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 108-40 WAC, the purpose of the proposed rules is to establish the charter school commission's charter school oversight and corrective action policy, renewal and nonrenewal policy, revocation policy, and termination protocol.

Chapter 108-50 WAC, the purpose of the proposed rules is to establish the charter school commission's public records officer, walk-in availability of public records, public records request processing protocol, agency exemption criteria, costs of printed and otherwise hardcopy versions of public records, and review of denial protocol for charter school commission compliance with Public Records Act, chapter 42.56 RCW.

Reasons Supporting Proposal: Chapter 108-40 WAC, the charter school commission must publish its rules regarding charter school oversight and corrective action policy, renewal and nonrenewal policy, revocation policy, and termination protocol so that the public and approved and potential applicants have adequate notice.

Chapter 108-50 WAC, ensures charter school commission compliance with Public Records Act, chapter 42.56 RCW.

Statutory Authority for Adoption: For chapter 108-40 WAC is RCW 27A.710.070 [28A.710.070], 27A.710.180 [28A.710.180], 27A.710.190 [28A.710.190] and 27A.710.200 [28A.710.200]; and for chapter 108-50 WAC is chapter 42.56 RCW.

Statute Being Implemented: For chapter 108-40 WAC is chapter 28A.710 RCW; and for chapter 108-50 WAC is chapter 42.56 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Charter school commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Colin Pippin-Timco, 1068 Washington, Olympia, WA 98501, (360) 725-5511.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement or school district fiscal impact statement does not apply.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules do not provide material change to Washington state statute and are therefore exempt from the cost-benefit analysis.

February 28, 2014

Colin Pippin-Timco

Executive Assistant

Chapter 108-40 WAC**CHARTER SCHOOL OVERSIGHT AND CORRECTIVE ACTION POLICY, RENEWAL AND NONRENEWAL POLICY, REVOCATION POLICY, AND TERMINATION PROTOCOL****NEW SECTION**

WAC 108-40-010 Oversight and corrective action policy statement. The Washington state charter school commission is responsible under RCW 28A.710.180 for oversight and accountability of the performance and effectiveness of all charter schools it authorizes under RCW 28A.710.070. This oversight and accountability is ongoing and is not limited to the specific actions and procedures described in these rules. For the purposes of the commission's rules governing the oversight and accountability of charter schools it authorizes, the term "school" means a school that has been authorized by the commission under RCW 28A.710.070.

NEW SECTION

WAC 108-40-020 Oversight. (1) In carrying out its responsibilities for oversight and accountability of the performance and effectiveness of schools it authorizes, the commission may utilize information including, but not limited to:

(a) The annual reports submitted to the commission under RCW 28A.710.040;

(b) All reports and data submitted to the office of the superintendent of public instruction under chapter 28A.710 RCW;

(c) Annual site visits;

(d) The charter contract;

(e) Financial data and audit materials; and

(f) Any other information, data or materials associated with the schools.

(2) The commission will require submission of, or access to, materials or data from the school deemed reasonably necessary for oversight and accountability of the schools.

NEW SECTION

WAC 108-40-030 Inquiries and site visits. (1) If the commission deems an inquiry or investigation necessary, it may request access to facilities, data, information, and staff. Charter schools are required to provide access to facilities, data, information, and staff in the manner and time frame requested by the commission.

(2) The commission will consider requests to adjust the manner and time frame if the school provides good cause. Failure to provide access as requested is considered a material and substantial violation of the charter school's legal and contractual obligations.

(3) Information about the investigation or inquiry will be provided at the discretion of the commission. One consideration is the possible impact of the disclosure on the inquiry or investigation.

(4) At the point of the inquiry or investigation when the commission has reason to believe that a charter school's performance or legal compliance is unsatisfactory, the commission will:

(a) Promptly notify the school of the perceived problem. Notice will be provided in writing. Depending on the circumstance of the apparent issue, prompt notice could range from between immediate to fourteen days depending on reliable information causing the commission to believe that the school's performance or legal compliance is unsatisfactory;

(b) The school must respond in writing to the apparent issue or perceived problem within ten working days. The commission will consider the response and other evidence and information available and determine whether corrective action or sanctions are necessary; and

(c) If the commission determines that corrective action or sanctions are appropriate, the school will be required to submit a corrective action plan or adhere to sanctions imposed by the commission.

(5) The commission may conduct site visits to charter schools in its portfolio for the purpose of conducting oversight and accountability of schools.

(6) If circumstances warrant it, the commission may alter the time frames within these rules.

NEW SECTION

WAC 108-40-040 Corrective action process. (1) If there is immediate threat to student or employee well-being, the commission may require immediate correction of the deficiency or correction within a time frame indicated by the commission.

(2) Serious violations will require a formal corrective action plan.

(3) In addition to requiring a school to correct any deficiencies, the commission may take other appropriate corrective actions or exercise sanctions up to and including revocation. Sanctions may include:

(a) Completion of corrective action plan within a specified time frame; and

(b) Notification of probationary status and revocation.

(4) The corrective action plan must identify the date by which the deficiency will be corrected.

(5) Reasonable opportunity depends on the severity of issue and type of concern, and may come in the form of a corrective action plan (this needs to be grounded to something so that it is clear).

(6) Within ten days from receipt of notice, a school must provide the commission with a corrective action plan.

(7) The commission must approve the corrective action plan. Once approved, the school may seek one extension of the deadline for compliance for good cause shown. The commission is not required to approve the extension.

(8) If the extension is granted and the school does not satisfy the corrective action plan, the failure will be considered a material and substantial violation.

NEW SECTION

WAC 108-40-050 Corrective action plans. (1) Corrective action plans must:

(a) Address how the corrective action will be accomplished;

(b) Address how the school will identify and address other deficiencies associated with the corrective action;

(c) Address what measure(s) will be put in place to prevent future occurrence of defect;

(d) Indicate how the school will monitor compliance to assure that solutions are sustained;

(e) Identify person(s) responsible for corrections and sustaining change;

(f) Give the date by which correction will be made; and

(g) Include steps that will be taken to accomplish correction with steps, dates, and supporting evidence that the plan will be carried out as scheduled.

(2) The school may be required to submit progress reports or updated plans in accordance with the schedule specified with the commission.

(3) Commission acceptance of the corrective action plan is at its discretion and does not rule out imposition of other remedies or sanctions.

NEW SECTION

WAC 108-40-060 Renewal policy statement. The renewal process begins at the end of the school year preceding a charter school's final year of operation under an existing charter school contract. This is a rigorous process designed to enable the commission to make an informed decision about whether or not a charter school should be allowed to continue to operate for an additional contract term.

NEW SECTION

WAC 108-40-070 Renewal process. (1) No later than May 1st, one school year before the expiration of the charter school contract, the charter school must notify the commission in writing of its decision to either:

- (a) Request renewal of the contract; or
- (b) Cease operation at the expiration of the contract term.

(2) If the school has decided to cease operation at the expiration of the contract term, a termination protocol shall be implemented.

(3) If the school is requesting renewal under the existing contract, it must submit a renewal application before the final school year begins. The renewal application must be submitted no later than June 1st and must be received by the commission by 5:00 p.m.; if June 1st falls on a weekend, the renewal application must be received by the commission no later than 5:00 p.m. on the Monday following June 1st.

(4) Within ninety days of receiving a renewal application, the commission will issue a written performance report addressing the information outlined in WAC 108-50-200. The performance report will be sent to the school seeking renewal and posted on the commission's web site.

(5) The school may submit a response to the performance report that corrects or clarifies information contained in the report. If the school is subject to the ineligibility presumptions enumerated in WAC 108-50-300, then the school must rebut those presumptions by demonstrating exceptional circumstances that justify renewal in the response to the performance report. If the school submits a response, it must be received by the commission within thirty days of issuance of the performance report.

(6) In conjunction with the performance report, the commission will issue renewal application guidance. The renewal application guidance will, at a minimum, provide the charter school with an opportunity to:

(a) Present additional evidence, beyond the data contained in the performance report, supporting its case for charter contract renewal;

(b) Describe improvements undertaken or planned for the school; and

(c) Detail the school's plans for the next charter contract term. The renewal application guidance will also contain the criteria that will guide the commission's renewal decisions.

(7) For those renewal applications deemed eligible for renewal consideration, individuals designated by the commission may conduct a school site visit (renewal inspection) during the renewal applicant school's final school year under the existing contract. The renewal inspection may serve as one of the mechanisms for the commission to evaluate and document the charter school's performance and representa-

tions to inform the commission's renewal decision. The renewal inspection will include a review of the school's performance and satisfaction of its obligations under the charter contract, with specific focus on any concerns identified in the performance report. Within fourteen days following the renewal inspection, a renewal inspection report will be issued. The school will have one week to submit a written response to the renewal inspection report.

(8) Those renewal applications deemed ineligible for renewal consideration may appeal this determination in accordance with the procedures outlined in WAC 108-50-400.

(9) Interested parties, including members of the public, may submit written comments to the commission regarding the potential renewal of a school's charter contract. The deadline for submitting comments will be posted on the commission's web site.

(10) For applications deemed eligible for renewal consideration, commission staff will review renewal applications, the renewal inspection report, and other relevant information, and make a recommendation, based on the renewal criteria, to approve, deny, or conditionally approve the renewal application. This recommendation will be provided to the school and commissioners. This recommendation shall serve as notice of the prospect of and reasons for nonrenewal. Within twenty days of issuance of this recommendation, the school may request an opportunity to respond to the recommendation in accordance with the procedures outlined in WAC 108-50-400; failure to make such a request shall constitute a waiver.

(11) The commission will pass a resolution approving, denying, or conditionally approving the renewal application. Renewal may be for a term of up to five years. This term may be shorter depending on the school's performance, demonstrated capacities and particular circumstances.

(12) Upon approval of a school's renewal application, the school must execute a new contract within ninety days of the approval decision. The contract must include specific conditions that the commission determines are required for necessary improvements to the school.

NEW SECTION

WAC 108-40-080 Performance report. (1) The performance report will summarize the school's performance record and provide notice of any weaknesses or concerns perceived by the commission that may jeopardize the school's renewal if not timely rectified.

(2) The commission's school performance report will include, but is not limited to, the following information:

(a) Academic information such as student achievement data, comparative performance, student progress, postsecondary readiness, state and federal accountability, and mission specific accountability;

(b) Financial information such as near term indicators, sustainability indicators, and audit and accountability indicators; and

(c) Organizational information such as education program, charter school law compliance, safety and welfare

compliance, board performance and stewardship, and mission specific accountability.

(3) If there are reasons why the commission may not renew the charter, the performance report will provide the school with notice of those reasons and the prospect for non-renewal.

NEW SECTION

WAC 108-40-090 Renewal decision and presumptions. (1) In making charter renewal decisions, the commission will:

(a) Ground its decisions in evidence of the school's performance over the term of the charter contract in accordance with the performance framework set forth in the charter contract;

(b) Ensure that data used in making renewal decisions are available to the school and the public; and

(c) Provide a public report summarizing the evidence that forms the basis for its decision. Specific criteria guiding the commission's renewal decisions will be set out in the commission's renewal application guidance.

(2) Schools are presumed to be ineligible for renewal if they have:

(a) Committed a material and substantial violation of any of the terms, conditions, standards, or procedures required under this chapter or the charter contract;

(b) Failed to meet or make sufficient progress toward the performance expectations set forth in the charter contract;

(c) Failed to meet generally accepted standards of fiscal management;

(d) Substantially violated any material provision of law from which the charter school is not exempt;

(e) Fallen in the bottom quartile of schools on the state board's accountability index; and

(f) Are subject to an active corrective action plan for the failures or violations listed in (a) through (f) of this subsection.

(3) The presumption of ineligibility can be rebutted if the school demonstrates exceptional circumstances that the authorizer finds justifiable. The school must satisfy this burden in its application and response to the performance report.

(4) A decision to renew, conditionally renew, or non-renew a school's contract will be memorialized in a resolution that sets forth the action taken, the reasons for the decision, and assurances of compliance with the commission's procedural requirements. A report of action, with the resolution attached, must be submitted to the renewal applicant and the state board of education within ten days of the decision.

NEW SECTION

WAC 108-40-100 Procedures associated with possible nonrenewal decision. (1) If a school is notified that it is considered ineligible for renewal, or that nonrenewal is recommended, within twenty days of that notice, the school may request an opportunity to respond and present evidence challenging the determination of ineligibility or recommendation for nonrenewal. This request must be sent to the commission's executive director or designee. Failure to make this request within twenty days acts as a waiver rendering the

ineligibility determination or nonrenewal recommendation final.

(2) If a school requests an opportunity to respond, the commission will designate an individual, or individuals, to preside over a public proceeding at which the school may:

(a) Submit a written response explaining why it believes that its contract should be renewed;

(b) Submit documents and give testimony supporting the renewal of the contract;

(c) Call witnesses on its behalf; and

(d) Be represented by counsel.

(3) The commission may also, through staff or counsel, present documents, witnesses, or testimony to support the ineligibility determination or nonrenewal recommendation at the public proceeding.

(4) The presiding officer(s) shall regulate the course of the public proceeding and, in the discretion of the presiding officer(s), may impose reasonable limits on the conduct of the public proceeding including, but not limited to, limitations on the length of time that the school and commission has to present documents and evidence. The presiding officer(s) may issue deadlines and other requirements that the presiding officer(s) deem necessary for the orderly conduct of the proceeding. Unless they conflict with the Charter Schools Act and commission's rules, the provisions of chapter 34.05 RCW shall govern these proceedings.

(5) Within no more than thirty days of the public proceeding, the presiding officer(s) shall make a written recommendation to the commission regarding whether the ineligibility or nonrenewal decision should stand or whether it should be altered in some manner. This recommendation will be transmitted to the commission, the school, and posted on the commission's web site.

(6) The commission will, after a reasonable period for deliberation, consider the recommendation of the presiding officer(s), as well as any other evidence or documentation submitted during the application renewal process, and make a final determination. The commission's final determination shall be in the form of a resolution that, in the case of a non-renewal, clearly states the reasons for the nonrenewal.

(7) Within ten days of issuing this resolution, the commission will submit a report of action to the school and the state board of education. The resolution will be attached to the report of action and will set forth the action taken, reasons for the decision, and assurances of compliance with the commission's renewal/nonrenewal procedures.

NEW SECTION

WAC 108-40-110 Revocation of charter school contract. (1) The commission may revoke a school's contract at any time that it determines that the school failed to comply with the Charter Schools Act or:

(a) Committed a material and substantial violation of any of the terms, conditions, standards, or procedures required under this chapter or the charter contract;

(b) Failed to meet or make sufficient progress toward the performance expectations set forth in the charter contract;

(c) Failed to meet generally accepted standards of fiscal management; or

(d) Substantially violated any material provision of law from which the charter school is not exempt.

(2) If the commission determines that a school's contract should be revoked, the commission will notify the school, in writing, of the determination and the associated reasons. The school may submit a written response that must be received by the commission within thirty days of issuance of the notice.

(3) The commission, or a person designated by the commission, will review the notice, response, and any supporting information and issue a draft resolution to revoke or not revoke the school's contract and any conditions that are recommended if the school's contract is not to be revoked. The draft resolution will be sent to the school.

(4) The school may request an opportunity to respond to a draft resolution recommending revocation. This request must be sent to the commission's executive director, or designee, within twenty days of issuance of the draft resolution. Failure to make this request within twenty days acts as a waiver rendering the draft resolution final.

(5) If a school requests an opportunity to respond, the commission will designate an individual or individuals to preside over a public proceeding at which the school may:

(a) Submit a written response explaining why it believes that its contract should be renewed;

(b) Submit documents and give testimony supporting the renewal of the contract;

(c) Call witnesses on its behalf; and

(d) Be represented by counsel.

(6) The commission may also, through staff or counsel, present documents, witnesses or testimony to support the ineligibility determination or nonrenewal recommendation at the public proceeding.

(7) The presiding officer(s) shall regulate the course of the public proceeding and, in the discretion of the presiding officer(s), may impose reasonable limits on the conduct of the public proceeding including, but not limited to, limitations on the length of time that the school and commission has to present documents and evidence. The presiding officer(s) may issue deadlines and other requirements that the presiding officer(s) deems necessary for the orderly conduct of the proceeding. Unless they conflict with the Charter Schools Act, and commission's rules, the provisions of chapter 34.05 RCW shall govern these proceedings.

(8) Within no more than thirty days of the public proceeding, the presiding officer(s) shall make a written recommendation to the commission regarding whether the revocation decision should stand or whether it should be altered in some manner. This recommendation will be transmitted to the commission, the school, and posted on the commission's web site.

(9) The commission will, after a reasonable period for deliberation, consider the recommendation of the presiding officer(s) as well as any other evidence or documentation submitted during the revocation process, and make a final determination. The commission's final determination shall be in the form of a resolution that clearly states the reasons for the revocation or decision not to revoke.

(10) Within ten days of issuing this resolution, the commission will submit a report of action to the school and the

state board of education. The resolution will be attached to the report of action and will set forth the action taken, reasons for the decision, and assurances of compliance with the commission's renewal/nonrenewal procedures.

(11) Nothing within these rules prevents the commission from engaging in contingency planning.

NEW SECTION

WAC 108-40-120 Termination protocol statement.

The following roles and procedures govern the closure of a school upon nonrenewal, revocation, or other termination of the charter school contract. All time frames are triggered by a final decision to nonrenew, revoke, or terminate a charter school contract.

NEW SECTION

WAC 108-40-130 Termination protocol responsibilities of the charter school board.

The charter school board shall be responsible for the obligations associated with this termination protocol. These obligations are personal and extend beyond the term of the contract.

NEW SECTION

WAC 108-40-140 Termination protocol responsibilities of the commission's staff.

(1) Within twenty-four hours of a decision to nonrenew, revoke, or terminate a charter school contract, the commission's staff will establish a transition team.

(2) Within twenty-four hours of a decision to nonrenew, revoke, or terminate a charter school contract, the commission staff will notify the Washington state board of education and the office of superintendent of public instruction.

NEW SECTION

WAC 108-40-150 Termination protocol responsibilities of the transition team.

(1) The transition team may include:

(a) Commission staff;

(b) Charter school board chair or designee;

(c) Lead administrator from the charter school;

(d) Lead finance person from the charter school;

(e) Lead person from the charter school faculty; and

(f) Lead person from the charter school parent organization.

(2) The transition team will develop a closure plan and assign roles.

(3) Within forty-eight hours of a decision to nonrenew, revoke, or terminate a charter school contract, the transition team will notify districts materially impacted by the closure decision with information including:

(a) A process for appeals;

(b) A timeline for final decision;

(c) A copy of the closure letter sent to parents;

(d) A copy of letters sent to school faculty and staff;

(e) Information regarding the school closure process;

(f) Information regarding the plan being developed to ensure an orderly closure process; and

- (g) Commission decision-making materials, including:
 - (i) A resolution to close school; and
 - (ii) A copy of a termination agreement.

(4) Within seventy-two hours of a decision to nonrenew, revoke, or terminate a charter school contract, a parent contact list for enrolled students will be created and the transition team will notify parents of the closure decision. A parent contact list may include:

- (a) Student name;
- (b) Parent name;
- (c) Address;
- (d) Telephone number; and
- (e) E-mail.

(5) A notification of the closure decision may include:

- (a) Notification of the closure decision;
- (b) Timeline for transition;
- (c) Assurance that instruction will continue through the end of the school year or the date when instruction will cease;
- (d) Assurance that parents and students will be assisted in the reassignment process;
- (e) Frequently asked questions about the charter closure process; and

(f) Commission and school contact information for parents/guardians with questions.

(6) Within seventy-two hours of a decision to nonrenew, revoke, or terminate a charter school contract, the transition team will create a faculty contact list. The faculty contact list may contain:

- (a) Name;
- (b) Position;
- (c) Address;
- (d) Telephone number; and
- (e) E-mail.

(7) Within five business days of a decision to nonrenew, revoke, or terminate a charter school contract the transition team will develop a closure plan. The closure plan will include responsible persons and written reports concerning:

- (a) Reassignment of students;
- (b) Return or distribution of assets;
- (c) Transfer of student records;
- (d) Notification of entities doing business with the school;
- (e) The status of the school's finances; and
- (f) Submission of all required reports and data to the commission and/or OSPI.

NEW SECTION

WAC 108-40-160 Termination protocol responsibilities of the charter school lead administrator. (1) The school's lead administrator will maintain corporate records and IRS 501 (C)(3) status. Corporate records include, but are not limited to:

- (a) Loans, bonds, mortgages, and other financing;
- (b) Contracts;
- (c) Leases;
- (d) Assets and asset distribution;
- (e) Grants;
- (f) Governance;
- (g) Accounting and tax records;

- (h) Personnel;
- (i) Employee benefit programs and benefits; and
- (j) Any other items listed in the closure plan.

(2) The charter school's lead administrator will maintain existing insurance coverage for assets under the school closure action plan, as well as for the facility, vehicles, and other assets until disposal, transfer of real estate, or termination of lease, and disposal, transfer, or sale of vehicles and other assets.

(3) Within ten days of a decision to nonrenew, revoke, or terminate a charter school contract, the charter school's lead administrator will notify commercial lenders and bond holders of the school's closure, and a likely date of when an event of default will occur, as well as the projected date for the last payment by the school towards its debt.

(4) Within ten days of a decision to nonrenew, revoke, or terminate a charter school contract, the charter school's lead administrator will notify the following groups as to the school's closure and project date of closure:

- (a) Charitable partners; and
- (b) Vendors.

(5) Within ten days of a decision to nonrenew, revoke, or terminate a charter school contract, the charter school's lead administrator will create and submit to commission staff a list of all creditors and debtors, and any amounts accrued and unpaid with respect to such creditor or debtor.

(6) Within fifteen days of the commission's resolution to not renew or terminate a charter school contract, the charter school's lead administrator will:

(a) Create a list of all contractors with contracts in effect, and notify the contractors of the school's closure and cessation of operations;

(b) Instruct contractors to remove any contractor property from the school prior to final day of school operation; and

(c) Retain records of past contracts as proof of full payment, and terminate contracts for goods and services as of the last date such goods or services will be provided.

(7) Within fifteen days of a decision to nonrenew, revoke, or terminate a charter school contract, the charter school's lead administrator will notify an education service provider of termination of education program by the school's board, providing:

(a) The last day of classes and absence of summer school;

(b) Notice of nonrenewal in accordance with management contract;

(c) Request for final invoice and accounting to include accounting of retained school funds and grant fund status; and

(d) Notice to the education service provider to remove any property lent to the school after the end of classes, and to request a receipt for such property.

(8) Within thirty days after the last day of classes, the charter school's lead administrator will transfer student records to students' new school. Student records include:

- (a) Grades and any evaluation data;

(b) All materials associated with individual education plans;

- (c) Immunization records; and

(d) Parent or guardian information.

(9) Within five days of the transfer of student records, the charter school's lead administrator will provide the commission with written verification of transfer of student records. Written verification of records must include:

- (a) Number of general education records transferred;
- (b) Number of special education records transferred;
- (c) Date of transfer;

(d) Signature and printed name of the charter school representative releasing the records; and

(e) Signature and printed name of the district or other entity recipient(s) of the records.

(10) Within thirty days after the last day of classes, the charter school's lead administrator will review, prepare and make available to commission staff an itemized financial statement that includes, but is not limited to:

- (a) Fiscal year-end financial statements;
- (b) Cash analysis;
- (c) List of compiled bank statements for the year;
- (d) List of investments;
- (e) List of payables and determinations of when a check used to pay the liability will clear the bank;
- (f) List of all unused checks;
- (g) List of petty cash;
- (h) List of bank accounts; and
- (i) List of all payroll reports including taxes, retirement, or adjustments on employee contracts.

NEW SECTION

WAC 108-40-170 Termination protocol responsibilities of the charter school lead administrator and the charter school commission staff. (1) Within five business days of a decision to nonrenew, revoke, or terminate a charter school contract commission staff and lead administrator from charter school will review the school's budget. The purpose of the review is to:

(a) Ensure that funds are sufficient to operate the school through the end of the school year, if applicable;

(b) Emphasize the legal requirement to limit expenditures to only those in the approved budget, while delaying approved expenditures that might no longer be necessary until a revised budget is approved;

(c) Make revisions that take into account closure and associated expenses while prioritizing continuity of instruction; and

(d) Identify acceptable use of reserve funds.

(2) Within ten business days of a decision to nonrenew, revoke, or terminate a charter school contract, commission staff and lead administrator will hold a parent closure meeting. The purpose of the parent closure meeting is to:

(a) Provide overview of the commission's closure policy and closure decision;

(b) Provide calendar of important dates for parents;

(c) Provide specific remaining school vacation days and date for the end of classes;

(d) Present timeline for transitioning students;

(e) Present timeline for closing down of school operations; and

(f) Provide contact information.

(3) Within ten days of a decision to nonrenew, revoke, or terminate a charter school contract, commission staff and lead administrator will meet with charter school faculty and staff. The purpose of this meeting is to:

(a) Discuss reasons for closure;

(b) Emphasize importance of maintaining continuity of instruction through the end of the school year;

(c) Discuss plans for helping students find new schools;

(d) Identify date when last salary check will be issued, when benefits terminate, and last day of work; and

(e) Describe assistance, if any, which will be provided to faculty and staff to find new positions.

NEW SECTION

WAC 108-40-180 Termination protocol responsibilities of the charter school financial lead. (1) Within five business days of the last day of classes, the charter school's financial lead will file Federal Form 269 and 269a if the school has been receiving funds directly from the United States Department of Education.

(2) Within one hundred twenty days after the last day of classes, the charter school's financial lead will establish a date for audit to perform final close out audit. Lead must provide commission with findings of audit within forty-eight hours of receipt of findings.

NEW SECTION

WAC 108-40-190 Termination protocol final closure meeting. (1) Within five days of receiving the finalized audit report, commission staff will establish a date for a final report meeting between commission staff, charter school board, lead administrator, and financial lead. This meeting is established to:

(a) Ensure termination protocols have been followed;

(b) All necessary deliverables are accounted for;

(c) Review findings of final close out audit; and

(d) Ensure indemnification of the commission and its employees by the charter school board, lead administrator, and financial lead.

(2) In the event that the commission determines an incompletion and lacking of any protocols, deliverables, or audit findings, the charter school board, lead administrator, and financial lead should address these within forty-eight hours.

Chapter 108-50 WAC

PUBLIC RECORDS

AUTHORITY AND PURPOSE

NEW SECTION

WAC 108-50-010 Authority and purpose. These rules are established pursuant to chapter 42.56 RCW for the purposes of protecting public records and making them readily accessible to the public. In carrying out its responsibilities under the Public Records Act (act), the charter school com-

mission (commission) will be guided by the provisions of the act describing its purposes and interpretation.

AGENCY DESCRIPTION—CONTACT INFORMATION—PUBLIC RECORDS OFFICER

NEW SECTION

WAC 108-50-020 Agency description—Contact information—Public records officer. (1) The commission authorizes high quality public charter schools throughout the state and ensures the highest standards of accountability and oversight for those schools. The commission's central office is located at:

Washington State Charter School Commission
1068 Washington St. S.E.
Olympia, WA 98501

(2) Any person wishing to request access to public records of the commission, or seeking assistance in making such a request should contact the public records officer of the commission:

Public Records Officer
Washington State Charter School Commission
1068 Washington St. S.E.
Olympia, WA 98501
360-725-5511
Colin.pippin-timco@charterschool.wa.gov

Information is also available at the commission's web site.

(3) The public records officer will oversee compliance with the act but another commission staff member may process the request. Therefore, these rules will refer to the public records officer or "designee." The public records officer or designee and the commission will provide the "fullest assistance" to requestors; create and maintain for use by the public and officials an index to public records of the commission; ensure that public records are protected from damage or disorganization; and prevent fulfilling public records requests from causing excessive interference with essential functions of the commission.

AVAILABILITY OF PUBLIC RECORDS

NEW SECTION

WAC 108-50-030 Availability of public records. (1) **Hours for inspection of records.** Public records are available for inspection and copying during customary business hours of the commission, customary office hours are from 8:00 a.m. to noon and from 1:00 p.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The commission is a small state agency with limited staffing. Consistent with other demands, the commission will provide fullest assistance when a request for inspection is made; to avoid inconvenience, a time to inspect the records should be scheduled with the public records officer. Records must be inspected at the commission's office.

(2) **Records index.** An index of public records is available for use by members of the public, including:

- (a) Commission monthly meetings;
- (b) Annual solicitation documents;
- (c) Charter school application documents;
- (d) Evaluation team recommendation reports;
- (e) Resolutions by the commission which are filed by resolution number, by year.

The index may be accessed online at the commission's web site.

(3) **Organization of records.** The commission will maintain its records in a reasonably organized manner. The commission will take reasonable actions to protect records from damage and disorganization. A requestor shall not take the commission records from the commission offices without the permission of the public records officer or designee. A variety of records is available on the commission web site.

Requestors are encouraged to view the documents available on the web site prior to submitting a records request.

(4) **Making a request for public records.**

(a) Any person wishing to inspect or copy public records of the commission shall make the request in writing on the commission's request form, or by letter, fax, or e-mail addressed to the public records officer and including the following information:

- Name of requestor;
- Address of requestor;
- Other contact information, including telephone number and any e-mail address;
- Adequate identification of the public records for the public records officer or designee to locate the records; and
- The date and time of day of the request.

(b) No fee shall be charged for the inspection of public records. The commission may impose a reasonable charge for providing copies of public records; those charges shall not exceed the amount necessary to reimburse the commission for actual costs incident to such copying. When subject to reasonable charge, no public records will be released until and unless the requestor has tendered payment for such copying to the appropriate official. All charges must be paid by money order, check, or cash in advance.

(c) A form is available for use by requestors at the office of the public records officer and online at the commission's web site.

PROCESSING OF PUBLIC RECORDS REQUESTS—GENERAL

NEW SECTION

WAC 108-50-040 Processing of public records requests—General. (1) **Providing "fullest assistance."** The commission is charged by statute with adopting rules which provide for how it will "provide full access to public records," "protect records from damage or disorganization," "prevent excessive interference with other essential functions of the agency," provide "fullest assistance" to requestors, and provide the "most timely possible action" on public records requests. The public records officer or designee will process

requests in the order allowing the most requests to be processed in the most efficient manner.

(2) **Acknowledging receipt of request.** Within five business days of receipt of the request, the public records officer will do one or more of the following:

(a) Make the records available for inspection or copying;

(b) If copies are requested and payment of a deposit for the copies, if any, is made or terms of payment are agreed upon, send the copies to the requestor;

(c) Provide a reasonable estimate of when records will be available; or

(d) If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor. Such clarification may be requested and provided by telephone. The public records officer or designee may revise the estimate of when records will be available; or

(e) Deny the request.

(3) **Consequences of failure to respond.** If the commission does not respond in writing within five business days of receipt of the request for disclosure, the requestor should consider contacting the public records officer to determine the reason for the failure to respond.

(4) **Protecting rights of others.** In the event that the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. Such notice should be given so as to make it possible for those other persons to contact the requestor and ask him or her to revise the request, or if necessary, seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

(5) **Records exempt from disclosure.** Some records are exempt from disclosure, in whole or in part. If the commission believes that a record is exempt from disclosure and should be withheld, the public records officer will state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.

(6) **Inspection of records.**

(a) Consistent with other demands, the commission shall promptly provide space to inspect public records. No member of the public may remove a document from the viewing area or disassemble or alter any document. The requestor shall indicate which documents he or she wishes the agency to copy.

(b) The requestor must claim or review the assembled records within thirty days of the commission's notification to him or her that the records are available for inspection or copying. The agency will notify the requestor in writing of this requirement and inform the requestor that he or she should contact the agency to make arrangements to claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the thirty-day period or make other arrangements, the commission may close the request and refile the assembled records.

Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which can be processed as a new request.

(7) **Providing copies of records.** After inspection is complete, the public records officer or designee shall make the requested copies or arrange for copying.

(8) **Providing records in installments.** When the request is for a large number of records, the public records officer or designee will provide access for inspection and copying in installments, if he or she reasonably determines that it would be practical to provide the records in that way. If, within thirty days, the requestor fails to inspect the entire set of records or one or more of the installments, the public records officer or designee may stop searching for the remaining records and close the request.

(9) **Completion of inspection.** When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that the commission has completed a diligent search for the requested records and made any located nonexempt records available for inspection.

(10) **Closing withdrawn or abandoned request.** When the requestor either withdraws the request or fails to fulfill his or her obligations to inspect the records, or pay the deposit or final payment for the requested copies, the public records officer will close the request and indicate to the requestor that the commission has closed the request.

(11) **Later discovered documents.** If, after the commission has informed the requestor that it has provided all available records, the commission becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requestor of the additional documents and provide them on an expedited basis.

EXEMPTIONS

NEW SECTION

WAC 108-50-060 Exemptions. (1) The Public Records Act provides that a number of types of documents are exempt from public inspection and copying. In addition, documents are exempt from disclosure if any "other statute" exempts or prohibits disclosure. Requestors should be aware of the following exemptions, outside the Public Records Act, that restrict the availability of some documents held by the commission for inspection and copying:

(a) Examination test scores;

(b) Teacher, student, or public employee information that would constitute an invasion of privacy as defined in RCW 42.56.210;

(c) Preliminary drafts, notes, recommendations and intra-agency memorandums not publicly cited by the commission in connection with any commission action.

Pursuant to RCW 42.56.070, the commission reserves the right to delete identifying details when it makes available or publishes any public record when there is reason to believe that disclosure of such details would be an unreasonable invasion of personal privacy: Provided, however, in each case, the justification for the deletion shall be explained fully in writing.

(2) The commission is prohibited by statute from disclosing lists of individuals for commercial purposes.

COSTS OF PROVIDING COPIES OF PUBLIC RECORDS

NEW SECTION

WAC 108-50-070 Costs of providing copies of public records. (1) **Costs for paper copies.** There is no fee for inspecting public records. A requestor may obtain standard black and white photocopies for five cents per page and color copies for ten cents per page.

Before beginning to make the copies, the public records officer or designee may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor. The public records officer or designee may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment, before providing that installment. The commission will not charge sales tax when it makes copies of public records.

(2) **Costs for electronic records.** The cost of electronic copies of records shall be two dollars for information on a CD-ROM. The cost of scanning existing commission paper or other nonelectronic records is five cents per page. There will be no charge for e-mailing electronic records to a requestor, unless another cost applies such as a scanning fee.

(3) **Costs of mailing.** The commission may also charge actual costs of mailing, including the cost of the shipping container.

(4) **Payment.** Payment may be made by cash, check, or money order to the commission.

REVIEW OF DENIALS OF PUBLIC RECORDS

NEW SECTION

WAC 108-50-080 Review of denials of public records. (1) **Petition for internal administrative review of denial of access.** Any person who objects to the initial denial or partial denial of a records request may petition in writing (including e-mail) to the public records officer for a review of that decision. The petition shall include a copy of or reasonably identify the written statement by the public records officer or designee denying the request.

(2) **Consideration of petition for review.** The public records officer shall promptly provide the petition and any other relevant information to the public records officer's supervisor or other agency official designated by the agency to conduct the review. That person will immediately consider the petition and either affirm or reverse the denial within two business days following the agency's receipt of the petition, or within such other time as the commission and the requestor mutually agree to.

(3) **Applicable to state agencies only - Review by the attorney general's office.** Pursuant to RCW 42.56.530, if the commission denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request the attorney gen-

eral's office to review the matter. The attorney general has adopted rules on such requests in WAC 44-06-160.

(4) **Judicial review.** Any person may obtain court review of denials of public records requests pursuant to RCW 42.56.550 at the conclusion of two business days after the initial denial regardless of any internal administrative appeal.

WSR 14-06-063 PROPOSED RULES RECREATION AND CONSERVATION OFFICE

[Filed February 28, 2014, 2:21 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-01-093.

Title of Rule and Other Identifying Information: Amendments to all chapters within Title 286 WAC, Interagency committee for outdoor recreation.

Hearing Location(s): Natural Resources Building, Room 172, 1111 Washington Street S.E., Olympia, WA 98504, on April 16, 2014, at 11:30 a.m.

Date of Intended Adoption: April 16, 2014.

Submit Written Comments to: Leslie Connelly, 1111 Washington Avenue South, P.O. Box 40917, Olympia, WA 98504-0917, e-mail leslie.connelly@rco.wa.gov, fax (360) 902-3026, by April 15, 2014.

Assistance for Persons with Disabilities: Contact Cindy Gower by April 15, 2014, TTY (360) 902-1996 or (360) 902-3013.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: (1) Change the agency's name from the interagency committee for outdoor recreation to the recreation and conservation office or the recreation and conservation funding board, (2) revise the general grant assistance rules for grant application procedures and deadlines, matching shares, and retroactive costs, (3) change the planning eligibility for applicants from five to six years in the boating facilities program, and (4) revise the long-term grant compliance requirements for projects funded in the firearms and archery range recreation program.

Reasons Supporting Proposal: (1) The agency's name was changed in 2007 in state law, (2) the grant assistance rules are outdated, (3) the planning eligibility in the boating facility program planning conflicts with other administrative rule language, and (4) the long-term compliance requirements for projects funded through the firearms and archery range recreation program is unclear and inconsistent with other grant programs.

Statutory Authority for Adoption: For Title 286 WAC is section 39, chapter 241, Laws of 2007 and RCW 34.05.220, 34.05.230, and 42.56.040; for chapter 286-26 WAC is RCW 46.09.530; for chapter 286-27 WAC is RCW 79A.15.030, 79A.15.060, 79A.15.070, 79A.15.120, and 79A.15.130; and for chapter 286-30 WAC is RCW 79A.25.210.

Statute Being Implemented: Chapters 79A.15 and 79A.25 RCW, RCW 46.09.530 and 79.150.105.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Recreation and conservation office, governmental.

Name of Agency Personnel Responsible for Drafting: Leslie Connelly, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-3080; Implementation and Enforcement: Kileen Cottingham, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-3000.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule making does not meet the definition of a "minor cost" in RCW 19.85.020(2). The rule making clarifies grant application and implementation requirements. Applying for a grant is a voluntary action with no direct fee to apply.

A cost-benefit analysis is not required under RCW 34.05.328. The recreation and conservation office is not listed as an agency required to complete a cost-benefit analysis under RCW 34.05.328 (5)(a)(i).

February 28, 2014
Leslie Connelly
Natural Resources
Policy Specialist

AMENDATORY SECTION (Amending WSR 05-01-030, filed 12/3/04, effective 1/3/05)

WAC 286-04-010 What definitions apply to this chapter? For purposes of Title 286 WAC, unless the context clearly indicates otherwise:

"Acquisition" means the gaining of rights of public ownership by purchase, negotiation, or other means, of fee or less than fee interests in real property.

"Applicant" means any agency or organization that meets qualifying standards, including deadlines, for submission of an application soliciting a grant of funds from the ((~~committee~~)) board. Generally, a federal, state, local, tribal or special purpose government is an applicant.

"Application" means the form, including project information form, approved by the director for use by applicants in soliciting project funds administered by the ((~~committee~~)) board.

"Board" means the recreation and conservation funding board as described in RCW 79A.25.110.

"Chair" means the chair of the ((~~committee~~)) board as described in RCW 79A.25.110.

((("Committee" means the interagency committee for outdoor recreation, (IAC) created by RCW 43.99.110.))

"Development" means the construction and/or restoration of facilities to enhance outdoor recreation or habitat conservation resources.

"Director" means the director of the ((~~committee~~)) office or that person's designee((. See RCW 43.99.130)) as described in RCW 79A.25.150.

"Nonhighway and off-road vehicle activities (NOVA) program" means the grants and planning program administered by the ((~~committee~~)) board under chapter 46.09 RCW.

"Manual(s)" mean a compilation of state and federal policies, procedures, rules, forms, and instructions that have been assembled in manual form and which have been

approved by the ((~~committee~~)) board or director for dissemination to agencies and organizations that may wish to participate in the ((~~committee's~~)) board's grant program(s).

"Office" means the recreation and conservation office or the office of recreation and conservation as described in RCW 79A.25.010.

"Preliminary expense" means project costs incurred prior to ((~~committee~~)) board or director approval, other than site preparation/development costs, necessary for the preparation of a development project.

"Project" means the undertaking which is, or may be, funded in whole or in part with funds administered by the ((~~committee~~)) board.

"Project agreement" means a project agreement, supplemental agreement, intergovernmental agreement, or project contract between the ((~~committee~~)) office and a sponsor.

"Sponsor" means an applicant who has been awarded a grant of funds, and has an executed project agreement.

AMENDATORY SECTION (Amending WSR 94-17-095, filed 8/17/94, effective 9/17/94)

WAC 286-04-015 Address. All communications with the ((~~committee~~)) board shall be directed to ((~~its~~)) the recreation and conservation office at the Natural Resources Building, 1111 Washington Street S.E., P.O. Box 40917, Olympia, Washington 98504-0917, telephone ((360) 902-3000)) 360-902-3000.

AMENDATORY SECTION (Amending WSR 94-17-095, filed 8/17/94, effective 9/17/94)

WAC 286-04-020 Organization and operations. The ((~~committee~~)) board:

(1) Is an unsalaried body consisting of the (a) commissioner of public lands, (b) director of the department of fish and wildlife, (c) director of the parks and recreation commission, (or the designees of these individuals) and five citizens appointed by the governor from the public-at-large, with the consent of the senate, for a term of three years each. The chair of the ((~~committee~~)) board is a voting member, appointed by the governor from among the five citizen members.

(2) Was created by Initiative 215 (Marine Recreation Land Act of 1964). It is authorized to allocate and administer funds to agencies and organizations from the state's outdoor recreation and other such accounts as may now or hereafter be established.

(3) Is authorized and obligated to prepare, maintain and update statewide plans, including:

(a) A strategic recreation resource and open space or assessment and policy plan (RCW ((43.99.025)) 79A.25.020 and 79A.35.040); and

(b) A nonhighway and off-road vehicle plan ((RCW 46.09.250));

(c) A trails plan (RCW 67.32.050)) (RCW 46.09.370).

(4) Does not own or operate any outdoor recreation or resource facilities.

(5) Performs and accomplishes work by a staff under the supervision of a director appointed by the governor.

(6)(a) Conducts regular meetings, pursuant to RCW 42.30.075, according to a schedule it adopts in an open public meeting.

(b) May conduct special meetings at any time, pursuant to RCW 42.30.080, if called by the chair.

(c) Maintains an official record of its meetings in a recorded audio format, unless written minutes are otherwise indicated for logistical reasons.

(7) Members who have been appointed from the public-at-large shall be reimbursed at the rate established by the office of financial management in accordance with RCW 43.03.050(1) for each day or portion thereof spent on official business and shall be entitled to receive all necessary travel expenses on the same basis as is provided by law for state officials and employees generally.

(8) Defines a quorum as five of its members.

(9) Adopts parliamentary meeting procedure generally as described in *Robert's Rules of Order*.

AMENDATORY SECTION (Amending WSR 96-08-044, filed 3/29/96, effective 4/29/96)

WAC 286-04-030 Goals. The general goals of the ((committee)) board and office are to:

(1) Provide funds and planning assistance for acquisition and development and use of outdoor recreation and habitat conservation resources to maximize protection of the natural quality of the environment;

(2) Provide funds and planning assistance for a system of public recreational facilities and opportunities for state residents and visitors;

(3) Aid organizations and local government, with funds and planning assistance, in providing the type of facilities and resources which, under their jurisdiction, will best serve their needs for outdoor recreation and habitat conservation; and

(4) Encourage programs which promote outdoor education, skill development, participation opportunity and proper stewardship of recreation and natural resources. See also RCW ((43.99.010)) 79A.25.005.

AMENDATORY SECTION (Amending WSR 94-17-095, filed 8/17/94, effective 9/17/94)

WAC 286-04-050 Compliance with Environmental Act guidelines. (1) The ((committee)) board has determined that all of its activities and programs in effect as of December 12, 1975, or pursuant to WAC 197-11-800 are exempt from threshold determinations and environmental impact statement requirements under the provisions of WAC 197-11-875.

(2) To the extent applicable, it is the responsibility of applicants and sponsors to comply with the provisions of chapter 197-11 WAC, the State Environmental Policy Act rules for acquisition or development of projects, the National Environmental Protection Act, and to obtain associated land-use permits.

AMENDATORY SECTION (Amending WSR 98-08-014, filed 3/18/98, effective 4/18/98)

WAC 286-04-060 Manuals and waivers—Guidance.

(1) The ((committee)) board or director shall adopt manuals that describe its general administrative policies for use by applicants, potential applicants, sponsors, and others. These manuals shall not have the force or effect of administrative code rules.

(2) ((Committee)) Board policies, including those in the manuals shall be considered and approved by the ((committee)) board in an open public meeting. Notice of such considerations will be given by distribution of the agenda for the meeting, press releases, formal meeting notice in the Washington State Register, or other such means.

(3) Project applicants, sponsors, or other interested parties may petition the director for a waiver or waivers of those items dealing with general administrative matters and procedures within the manuals. Determinations on petitions for waivers made by the director are subject to review by the ((committee)) board at the request of the petitioner.

(4) Petitions for waivers of subjects dealing with ((committee)) board policy, and those petitions that in the judgment of the director require ((committee)) board review, shall be referred to the ((committee)) board for deliberation. Such waivers may be granted after consideration by the ((committee)) board at an open public meeting.

AMENDATORY SECTION (Amending WSR 94-17-095, filed 8/17/94, effective 9/17/94)

WAC 286-04-065 Project evaluations. It is the policy of the ((committee)) board to use an open, public, competitive selection process to guide it in allocating funds to grant applicants. In this regard, the director shall use priority rating systems in preparing funding recommendations for ((committee)) board consideration. These systems shall:

(1) Be developed, to a reasonable extent, through the participation of interested parties and specialists;

(2) Consider applicant, local, regional, and statewide needs, a project's technical merits, and other criteria;

(3) Be adopted by the ((committee)) board in advertised public meetings;

(4) Be made available in published form to interested parties;

(5) Be designed for use by a team of evaluators selected for this purpose; and

(6) Be in accord with statutes.

AMENDATORY SECTION (Amending WSR 96-08-044, filed 3/29/96, effective 4/29/96)

WAC 286-04-070 Director's authority. Consistent with RCW ((43.99.025)) 79A.25.020, and other applicable laws, the director is delegated the authority and responsibility to carry out policies of the ((committee)) board. This includes, but is not limited to the authority to:

(1) Administer ((committee)) programs; employ, discipline, and terminate staff, consistent with applicable merit system and personnel rules;

(2) Administer all applicable rules, regulations and requirements established by the ~~((committee)) board~~ or reflected in the laws of the state; and

(3) Approve certain cost increase or waiver requests.

AMENDATORY SECTION (Amending WSR 96-08-044, filed 3/29/96, effective 4/29/96)

WAC 286-04-080 Federal overlay and requirements.

At times through the years, the ~~((committee's)) board's~~ grant programs have been closely interrelated with certain federal grant programs. For example, see WAC 286-40-010, Land and Water Conservation Fund. The result of this interrelationship is that there are many federal requirements imposed on the ~~((committee)) board~~ and its applicants over which the ~~((committee)) board~~ has no control.

Many of these requirements may be found in the Land and Water Conservation Fund Grants Manual (National Park Service). In addition, most of the federal requirements are restated or clarified in the manuals.

AMENDATORY SECTION (Amending WSR 94-17-095, filed 8/17/94, effective 9/17/94)

WAC 286-04-085 Declaratory order—Petition requisites—Consideration—Disposition. (1) Any person may submit a petition for a declaratory order in accordance with RCW 34.05.240 in any form so long as it:

(a) Clearly states the question the declaratory order is to answer; and

(b) Provides a statement of the facts which raise the question.

(2) The director may conduct an independent investigation in order to fully develop the relevant facts.

(3) The director will present the petition to the ~~((committee)) board~~ at the first meeting when it is practical to do so and will provide the petitioner with at least five days notice of the time and place of such meeting. Such notice may be waived by the petitioner.

(4) The petitioner may present additional material and/or argument at any time prior to the issuance of the declaratory order.

(5) The ~~((committee)) board~~ may decide that a public hearing would assist its deliberations and decisions. If such a hearing is ordered, it will be placed on the agenda of a meeting and at least five days notice of such meeting shall be provided to the petitioner.

AMENDATORY SECTION (Amending WSR 05-01-030, filed 12/3/04, effective 1/3/05)

WAC 286-04-090 What is the history of the ~~((committee's)) board's~~ fund sources? (1) As of July 1, 1995, the "recreation resource account" RCW 79A.25.200 included ~~((appropriations and))~~ funds, under ~~((RCW 43.99.040 (reecodified as) RCW 79A.25.040 (since 1999)))~~, in support of the ~~((committee's))~~ boating facilities and other programs. These funds are derived from:

(a) Unclaimed marine fuel tax refunds;

(b) Moneys made available to the state of Washington by the federal government for outdoor recreation; and

(c) Such other sources as may be provided.

(2) As of July 1, 1995, the "NOVA program account" RCW 46.09.510 included ~~((appropriations and))~~ funds, under ~~((46.09.110 and 46.09.170))~~ 46.68.045 and 46.09.520, in support of the ~~((committee's))~~ nonhighway and off-road vehicle activities program. These funds are derived from:

(a) Refunds from the motor vehicle fund for nonhighway and off-road purposes;

(b) Off-road vehicle permit fees; and

(c) Such other sources as may be provided.

(3) As of July 1, 1990, the "habitat conservation account" RCW 79A.15.020 included ~~((appropriations and))~~ funds, under chapter ~~((43.98A RCW (reecodified as chapter)))~~ 79A.15 RCW (since 1999)), in support of the ~~((committee's))~~ Washington wildlife and recreation program. These funds are derived from:

(a) Sales of bonds approved in capital budget appropriations; and

(b) Such other sources as may be provided.

(4) As of July 1, 1995, the "outdoor recreation account" RCW 79A.25.060 included ~~((appropriations and))~~ funds, under chapter ~~((43.98A RCW (reecodified as chapter)))~~ 79A.15 RCW (since 1999)), in support of the ~~((committee's))~~ Washington wildlife and recreation program. These funds are derived from:

(a) Sales of bonds approved in capital budget appropriations; and

(b) Such other sources as may be provided.

(5) Prior to July 1, 1995, the "outdoor recreation account" RCW 79A.25.060 included ~~((appropriations and))~~ funds, in support of the ~~((committee's)) board's~~ programs. Funds were derived from:

(a) Unclaimed marine fuel tax refunds under RCW ~~((43.99.040 (reecodified as RCW 79A.25.404 since 1999)))~~ 79A.25.040;

(b) Sales of bonds under Referenda 11, 18, 21, and 28, and HJR 52;

(c) State apportionments of the federal land and water conservation fund;

(d) Moneys refunded from the motor vehicle fund under RCW ~~((46.09.170))~~ 46.09.520 and funds received under RCW ~~((46.09.110))~~ 46.68.045 for nonhighway and off-road vehicle purposes;

(e) Off-road vehicle permit fees;

(f) Sales of general obligation bonds for outdoor recreation purposes under RCW ~~((43.98A.050))~~ 79A.15.050; and

(g) Such other sources as were provided.

(6) As of July 1, 1990, the "firearms range account" includes appropriations and funds, under ~~((RCW 77.12.720 (reecodified as) RCW 79A.25.210 (since 1999)))~~, in support of the ~~((committee's))~~ firearms and archery range recreation program~~((s))~~. These funds are derived from:

(a) Concealed pistol license fees under RCW 9.41.070;

(b) Destruction of firearms programs under RCW 9.41.098; and

(c) Such other sources as may be provided.

(7) As of July 1, 2003, the "aquatic lands enhancement account" ~~((includes appropriations under section 377, chapter 26, Laws of 2003, 1st sp. sess. These))~~ funds are derived from

the proceeds from sale or lease of aquatic lands or valuable materials therefrom under RCW ((79.90.245 and 79.90.450)) 79.105.150.

AMENDATORY SECTION (Amending WSR 01-17-056, filed 8/14/01, effective 9/14/01)

WAC 286-06-045 ((Committee)) Office and the salmon recovery funding board. The ((committee)) office provides support to the salmon recovery funding board, as directed in RCW 79A.25.240, including administration and management of the salmon board's public records. Such records shall be managed and made available through the ((committee's)) public records officer in the same manner as provided for ((committee)) office records and set forth in this chapter.

AMENDATORY SECTION (Amending WSR 01-17-056, filed 8/14/01, effective 9/14/01)

WAC 286-06-050 Public records available. All public records of the ((committee and board)) office, as defined in RCW ((42.17.260)) 42.56.070, as now or hereafter amended, are available for public inspection and copying pursuant to this regulation, except as otherwise provided by law, including, but not limited to, RCW ((42.17.255 and 42.17.310)) 42.56.050 and 42.56.210 and WAC 286-06-100((—)). Exemptions.

AMENDATORY SECTION (Amending WSR 01-17-056, filed 8/14/01, effective 9/14/01)

WAC 286-06-060 Responsibility. The public records shall be available through a public records officer designated by the director. The public records officer shall be responsible for: Implementation of the rules and regulations regarding release of public records, coordinating the staff of the ((committee)) office in this regard, and generally ensuring compliance with the public records disclosure requirements of chapter ((42.17)) 42.56 RCW as now or hereafter amended.

AMENDATORY SECTION (Amending WSR 01-17-056, filed 8/14/01, effective 9/14/01)

WAC 286-06-065 Indexes. (1) Through its public records officer, the ((committee)) office shall maintain indexes for the records and files listed in subsection (2)(a) through (g) of this section. These indexes:

(a) Provide identifying information as to its files and records;

(b) Are available for public inspection and copying at its offices in the Natural Resources Building, Olympia, in the manner provided in this chapter for the inspection and copying of public records;

(c) Are updated at least every five years and revised at appropriate intervals; and

(d) Are public records even if the records to which they refer may not, in all instances, be subject to disclosure.

(2) Indexes of the following records and files are available:

(a) Archived files;

(b) Equipment inventory;

(c) ((Committee)) Office and board policies and procedures, including manuals;

(d) Active project files;

(e) Publications such as brochures and special reports;

(f) Policy statements entered after June 30, 1990, as defined in RCW 34.05.010(15), including grant program manuals; and

(g) Rule-making files, as described in RCW 34.05.370, for each rule proposed for adoption in the *State Register* and adopted.

(3) The following general records and files are available by reference to topic, and generally arranged alphabetically or chronologically within such topic. Due to volume, costs and/or complexity, however, no master index is maintained.

(a) Administrative files;

(b) Comprehensive park-recreation plans;

(c) Summaries of ((committee)) office staff meetings;

(d) Closed/inactive project files;

(e) General correspondence;

(f) Attorney general opinions;

(g) Financial records;

(h) Summaries and memoranda of ((committee)) office and board meetings;

(i) Final adjudicative proceeding orders entered after June 30, 1990, as defined in RCW 34.05.010(1) that contain an analysis or decision of substantial importance to the ((committee)) office or board in carrying out its duties (each listed alphabetically by subject with a phrase describing the issue or issues and relevant citations of law);

(j) Declaratory orders entered after June 10, 1990, that contain an analysis or decision of substantial importance to the ((committee)) office or board in carrying out its duties (each listed alphabetically by case name with a phrase describing the issue or issues and relevant citations of law); and

(k) Interpretive statements as defined in RCW 34.05.010(8) (each indexed by the ((committee)) office or board program).

(4) Before June 30, 1990, the ((committee)) office maintained no index of:

(a) Declaratory orders containing analysis or decisions of substantial importance to the ((committee)) office in carrying out its duties;

(b) Interpretive statements as defined in RCW 34.05.010(8); and

(c) Policy statements as defined in RCW 34.05.010((14)) (15).

AMENDATORY SECTION (Amending WSR 94-17-095, filed 8/17/94, effective 9/17/94)

WAC 286-06-070 Office hours. Public records shall be available for inspection and copying during the ((committee's)) office's customary office hours. Those hours shall be consistent with RCW 42.04.060 and ((42.17.280)) 42.56.090, from 8:00 a.m. to noon and from 1:00 p.m. to 5:00 p.m., Monday through Friday, excluding legal holidays.

AMENDATORY SECTION (Amending WSR 01-17-056, filed 8/14/01, effective 9/14/01)

WAC 286-06-080 Requests for public records. Consistent with chapter ((42.17)) 42.56 RCW, public records may be inspected or copied or copies of such records may be obtained by members of the public, upon compliance with the following procedures:

(1) A request shall be made in writing, preferably on a form prescribed by the director, which shall be available at its Olympia office or electronically. The request shall be presented to the public records officer or designee. The request shall include the following information:

- (a) The name of the person requesting the record;
- (b) The calendar date on which the request was made;
- (c) The nature of the request;
- (d) A reference to the requested record as it is described in any current index, if the matter requested is referenced within indexes; and
- (e) An appropriate description of the record requested, if the requested matter is not identifiable in the indexes.

(2) Whenever a member of the public makes a request, the public records officer or designee shall ensure the request receives a "date received" stamp or equivalent notation and that assistance is provided in promptly identifying the public record requested as defined in RCW ((42.17.320)) 42.56.520. The ((agency)) office shall assist to the maximum extent consistent with ongoing operations, and retains the authority to condition records access to prevent unreasonable invasions of privacy, access to other information protected from disclosure by law, damage/disorganization, and excessive interference with office operations and equipment.

AMENDATORY SECTION (Amending WSR 01-17-056, filed 8/14/01, effective 9/14/01)

WAC 286-06-090 Copying. (1) No fee shall be charged for the inspection of public records.

(2) The director shall charge a fee of fifteen cents per page for providing copies of public records and for use of the ((committee's)) office's copy equipment. Copying in other formats shall be subject to a fee established by the director. These charges will be the amount necessary to reimburse the ((committee)) office for its actual costs incident to such copying.

AMENDATORY SECTION (Amending WSR 01-17-056, filed 8/14/01, effective 9/14/01)

WAC 286-06-100 Exemptions. (1) The ((committee and/or board and the)) director reserves the right to determine that a public record requested in accordance with the procedures outlined in WAC 286-06-080 is exempt under the provisions of state or federal law, or chapter ((42.17)) 42.56 RCW.

(2) In addition, pursuant to chapter ((42.17)) 42.56 RCW, the ((committee and/or board and the)) director reserves the right to delete identifying details when made available or published in cases when there is reason to believe that disclosure of such details would be an invasion of per-

sonal privacy, or would disclose information otherwise protected by law.

(3) All denials of requests for public records, in whole or part, will be accompanied by a written statement specifying the reason for the denial, including a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld.

AMENDATORY SECTION (Amending WSR 01-17-056, filed 8/14/01, effective 9/14/01)

WAC 286-06-110 Review of denials. (1) Any person who objects to the denial of a request for a public record may petition the director for review by submitting a written request. The request shall specifically refer to the written statement which constituted or accompanied the denial.

(2) After receiving a written request for review of a decision denying inspection of a public record, the director, or designee, will either affirm or reverse the denial by the end of the second business day following receipt according to RCW ((42.17.320)) 42.56.520. This shall constitute final ((ecommittee and/or board)) action. ((Whenever possible in such matters, the director shall first consult with the committee's or board's chair and members.))

AMENDATORY SECTION (Amending WSR 05-01-030, filed 12/3/04, effective 1/3/05)

WAC 286-13-010 What is the purpose of this chapter? (1) This chapter contains general rules affecting grant program eligibility, applications, and projects funded with money from or through the ((ecommittee)) board.

(2) Further rules are in chapter 286-26 WAC (Nonhighway and off-road vehicle activities program), chapter 286-27 WAC (Washington wildlife and recreation program), chapter 286-30 WAC (Firearms and archery range recreation program), chapter 286-35 WAC (Initiative 215 boating facilities program), chapter 286-40 WAC (Land and water conservation fund program) and chapter 286-42 WAC (Aquatic lands enhancement account program).

AMENDATORY SECTION (Amending WSR 96-08-044, filed 3/29/96, effective 4/29/96)

WAC 286-13-020 Applications ((form)). (1) All grant requests must be completed and submitted in the format prescribed ((by the committee unless otherwise allowed)) by the director.

(2) If the director determines that the applicant is eligible to apply for federal funds administered by the ((ecommittee)) board, the applicant must execute the forms necessary for that purpose.

AMENDATORY SECTION (Amending WSR 98-08-014, filed 3/18/98, effective 4/18/98)

WAC 286-13-030 Application review. (1) All applications for funding submitted to the ((ecommittee)) office will be referred to the director for review and recommendations. In reaching a recommendation, the director shall seek the

advice and counsel of the ((committee's)) office's staff and other recognized experts, including those gathered at technical review and evaluation meetings or from other parties with experience in the field.

(2) The ((committee)) office shall inform all applicants of the specific project application process and methods of review, including current evaluation tests and instruments, by delineating these items in the manuals or other publicly available formats.

AMENDATORY SECTION (Amending WSR 05-01-030, filed 12/3/04, effective 1/3/05)

WAC 286-13-040 What are the grant program deadlines and how can the deadlines be waived? (1) ((Applications. To allow time for review, applications)) Compliance with the following deadlines is required to be eligible for grant funding and to receive grant funding.

(a) Applications must be submitted at least four calendar months before the ((funding)) meeting of the board at which the applicant's project is first considered. Applications must be completed in final form and on file with the ((committee)) office at least one calendar month before ((this)) the meeting of the board at which the applicant's project is first considered. Excepted are applications for ((the National Recreational Trails Funding Act, Riparian Habitat, and Youth Athletic Facilities Programs, and)) programs where the director specifically establishes another deadline to accomplish new or revised statutory direction, board direction, or to meet a federal grant application deadline.

((2) Plans.)) (b) Plans required for participation in ((committee)) board grant programs must be complete and on file with the ((committee)) office at least three calendar months before the ((funding)) meeting of the board at which the applicant's project is first considered. On the director's acceptance of the plan, the applicant shall be granted eligibility to submit applications for a period of up to six years.

((3) Matches.)) (c) To ((allow time for development of)) develop the director's funding recommendations, written assurance must be provided whenever matching resources are to be considered as a part of an application. This assurance must be provided by the applicant to the ((committee)) office at least one calendar month before the meeting of the board at which the project is to be considered for funding.

((4) Project agreement.)) (d) To prepare a project agreement, certain documents or materials in addition to the application may be required by the office. These documents or materials must be provided by the applicant to the office at least two calendar months after the date the board or director approves funding for the project or earlier to meet a federal grant program requirement. After this period, the board or director may rescind the offer of grant funds and reallocate the grant funds to another project(s).

(e) An applicant has three calendar months from the date ((of the committee's mailing of)) the office sends the project agreement to ((execute)) sign and return the agreement to the ((committee's)) office. After this period, the ((committee)) board or director may reject any agreement not signed and returned and reallocate the grant funds to another project(s).

((5) Waivers.)) (2) Compliance with ((these)) the deadlines is required ((for eligibility)) unless a waiver is granted by the board or director. Such waivers are considered based on several factors which may vary with the type of waiver requested, including any one or more of the following:

- ((When the applicant started the application/planning process (for application and plan deadline waivers))) Current status and progress made to meet the deadline;
- ((Progress made)) The reason the established deadline could not be met;
- ((final plan adoption will occur (for plan deadline waivers))) the deadline will be met;
- ((The cause of the delay (procedural or content related, etc.);
- ((e))) Impact on the ((committee's)) board's evaluation process;
- ((f))) Equity to other applicants; and
- ((g))) Such other information as may be relevant.

AMENDATORY SECTION (Amending WSR 06-05-024, filed 2/7/06, effective 3/10/06)

WAC 286-13-045 What rules govern ((eligible)) matching resources? (1) When ((requiring a match from an applicant for committee administered funds, or giving)) the board gives preference to an applicant that provides a ((match)) matching resource, it is the intent of the ((committee)) board to do so to foster and demonstrate local commitment to the proposed project ((and to demonstrate that commitment, and)), to make funds from a given grant program ((f)) and revenue source((f))) available to a greater number of projects, and to fund projects that are ready to implement without delay.

(2) Applicant resources used to match ((committee)) board funds must be eligible in the grant program. Sources of matching resources include, but are not limited to, any one or more of the following: ((Cash, local impact/mitigation fees, certain federal funds, the value of donations such as privately owned real estate, equipment, equipment use, materials, and labor; or any combination thereof))

(a) Appropriations and cash;

(b) Value of the applicant's expenses for labor, materials, and equipment;

(c) Value of donated real property, labor, services, materials, and equipment use; and

(d) Grant funds, except those from the same grant program administered by the board.

(3) ((An agency's or organization's match may include state and federal funds, including funds from other grant programs administered by the committee. However, the committee)) The board may require the ((agency or organization)) applicant to provide a portion of ((the match)) its matching resources in local resources.

(4) ((Private donated real property, or the value of that property, must consist of real property (land and facilities) that would normally qualify for committee grant funding.

((5))) State agency projects may be assisted by one hundred percent funding from ((committee sources)) board funds except where prohibited by law or the board.

((6) The eligibility of some federal and state funds to be used as a match is governed by federal and state requirements and thus may vary with individual program policies.))

(5) Grants from state funds are intended to supplement the existing capacity of a sponsor. They are not intended to supplant existing programs or fund projects that would have been undertaken without grant funding.

(6) Except for grant applications submitted within the same biennium, matching resources or board grant funds committed in one board funded project must not be used as match in another board funded project.

(7) If a matching resource is required or provided in the grant application, it must also conform to the deadlines in WAC 286-13-040.

AMENDATORY SECTION (Amending WSR 94-17-095, filed 8/17/94, effective 9/17/94)

WAC 286-13-050 ((Final)) Funding decision. The ((committee)) board will review recommendations from the director for grant projects at regularly scheduled ((funding sessions. It)) public meetings. The board retains the authority and responsibility to accept or deviate from these recommendations and((, where statutory authority exists, it alone will)) make the final decision concerning the funding of a project.

AMENDATORY SECTION (Amending WSR 96-08-044, filed 3/29/96, effective 4/29/96)

WAC 286-13-060 Project agreement. For every funded project, an agreement must be executed as provided in this section.

(1) The project agreement shall be prepared by the ((director)) office subsequent to approval of the project by the ((committee)) board at a public meeting. The ((director)) shall execute the agreement on behalf of the committee and tender the document to the applicant. On execution by the applicant, who through this action becomes the sponsor,)) project agreement is executed upon the signature of the office and the applicant and the parties are bound by the agreement's terms. The applicant ((may)) shall not proceed ((with the project)) until the project agreement has been executed ((and the project start date listed in the agreement has arrived)), unless specific authorization pursuant to WAC 286-13-085 ((1)(a))) has been given by the director.

(2) If the project is approved by the ((committee)) board to receive a grant from federal funds, the director shall not execute an agreement or amendment with the applicant until federal funding has been authorized through ((execution of a concurrent project)) an agreement with the applicable federal agency.

(3) Execution of the project agreement must conform to the deadlines in WAC 286-13-040.

AMENDATORY SECTION (Amending WSR 98-08-014, filed 3/18/98, effective 4/18/98)

WAC 286-13-070 Disbursement of funds. (1) Except as otherwise provided ((herein)) in this chapter, the ((director)) office will authorize disbursement of project funds only on a reimbursable basis((, after the sponsor has spent its own

funds and)) at the percentage identified in the project agreement after the sponsor has presented ((a billing showing satisfactory evidence of property rights acquired and/or)) an invoice documenting costs incurred and compliance with ((partial or all)) the provisions of the project agreement.

((1) Reimbursement method. Reimbursement must be requested on voucher forms authorized by the director and must include all documentation as detailed in the manual in effect at the time reimbursement is requested.))

(2) ((Reimbursement level.)) The amount of reimbursement may never exceed the cash spent on the project.

(3) ((Partial payment. Partial reimbursements may be made during the course of a project on presentation of billings showing satisfactory evidence of partial acquisition or development.))

(4) Exceptions.

(a) State agencies' Initiative 215 (Marine Recreation Land Act) appropriations. Prior to the 1995-1997 biennium (July 1, 1995,) state agencies were required to submit voucher forms with the supporting documentation specified in the manual in effect at the time of completion of project acquisition, relocation or development.

((b) Direct payment.)) Reimbursement shall not be approved for any donations, including donated real property.

(4) Direct payment to an escrow account of the ((committee's)) office's share of the approved cost of real property and related costs may be made following ((committee)) office approval ((of an acquisition project)) when the sponsor indicates a temporary lack of funds to purchase the property on a reimbursement basis. Prior to release of the ((committee's)) office's share ((of)) into escrow ((funds)), the sponsor must provide the ((director)) office with a copy of a binding ((sale)) agreement between the sponsor and the seller, all required documentation, and evidence of deposit of the sponsor's share ((if any)), identified in the project agreement, into an escrow account.

AMENDATORY SECTION (Amending WSR 06-05-024, filed 2/7/06, effective 3/10/06)

WAC 286-13-080 What rules govern expenses incurred before execution of a project agreement? ((Except as hereinafter provided, the committee will not approve the disbursement of funds for expenses)) Unless otherwise provided in this chapter, the office shall not approve the disbursement of funds for costs incurred before execution of a project agreement.

AMENDATORY SECTION (Amending WSR 98-08-014, filed 3/18/98, effective 4/18/98)

WAC 286-13-085 Retroactive, preagreement, and increased costs. ((See WAC 286-04-010 for definition of terms for the following section.))

Under most conditions, eligible expenses may only be reimbursed for activities)) (1) The office will only reimburse costs that occur within the period ((eited)) of performance in the project agreement((. This is known as the committee's prohibition on retroactivity. To avoid this prohibition, a waiver may be issued.))

((1) Retroactive land acquisition costs)).

(2) The director may grant a waiver of retroactivity for acquiring real property whenever an applicant asserts, in writing, ((that a condition exists which may jeopardize the project)) the justification for the critical need to purchase the property in advance of the project agreement along with any documentation required by the director. When evidence warrants, the director may grant the applicant permission to proceed by issuing ((the)) a written waiver. This waiver of retroactivity will not be construed as ((an)) approval of the proposed project. If the project is subsequently approved, however, the costs incurred will be eligible for ((assistance)) grant funding. If the project is to remain eligible for ((grant support)) funding from federal funds, the director shall not authorize a waiver of retroactivity to the applicant until the federal agency administering the federal funds has issued its own waiver of retroactivity as provided under its rules and regulations. A waiver may be issued for more than one grant program.

((2) Retroactive development costs.)) (3) The only retroactive acquisition, development, and restoration costs eligible for ((reimbursement consideration are preliminary expenses (e.g., engineering costs).))

However, solely in respect to WWRP projects on LEAP Capital Document 5, the director is authorized to grant a waiver of retroactivity which establishes eligibility for future reimbursement of all appropriate development costs. Such applicants' retroactivity requests must be in writing, and provide sufficient justification. Reimbursement of expenditures is subject to the provisions of WAC 286-13-070. This authority shall be effective until the execution of a project agreement or June 30, 1997, whichever occurs first.

(3) Cost increases:

((a)) grant funding are preagreement costs as defined by the board.

(4) Cost increases for approved projects may be granted by the ((committee)) board or director if financial resources are available.

((b)) (a) Each cost increase request will be considered on its merits.

((e)) If an approved project recommended for federal funding is denied by the appropriate federal agency, the sponsor may request that the committee increase assistance by an equivalent amount; such requests shall be considered on their merits.

((d)) (b) The director may approve a ((sponsor's acquisition, development, and/or noncapital project)) cost increase request so long as the ((total request)) cost increase amount does not exceed ten percent of the project's approved initial ((cost)) grant funding amount. The director's approval of an acquisition project cost increase is limited to a parcel-by-parcel appraised and reviewed value.

AMENDATORY SECTION (Amending WSR 94-17-095, filed 8/17/94, effective 9/17/94)

WAC 286-13-090 Federal assistance. Insofar as is possible under the ((committee's)) board's statewide ((plan(s))) plan provided ((under WAC 286-04-020(3))) in this chapter, applications will be administered and approved in a manner

that will maximize any federal assistance available for the benefit of projects in Washington.

AMENDATORY SECTION (Amending WSR 98-08-014, filed 3/18/98, effective 4/18/98)

WAC 286-13-100 Nonconformance and repayment. Any ((sponsor expenditure of committee grant moneys)) project cost deemed by the ((committee)) board or director to conflict with applicable statutes, rules and/or related manuals must be repaid, upon written request by the director, to the appropriate state account per the terms of the project agreement. Such repayment requests may be made in consideration of an applicable report from the state auditor's office.

AMENDATORY SECTION (Amending WSR 97-17-004, filed 8/7/97, effective 9/7/97)

WAC 286-13-110 Income, use of income ((use)). (1) ((Income:))

((a) Compatible source.)) The source of any income generated in a ((committee assisted)) funded project or project area must be compatible with the ((element(s) defined in the)) funding source and project agreement.

(a) The way the project or project area is defined varies with the source of funds provided by the ((committee)) board. That is, income generated in a project assisted with funds that originate from:

(i) A state source must be consistent with the limits of the element(s) assisted by the ((committee)) board (for example, within the area of an athletic field or habitat area).

(ii) The federal land and water conservation fund must be consistent within the protected boundary as described in ((chapter 660-26A. ("project area") of the *L&WCF Grants-in Aid Manual*)) the Land and Water Conservation Fund Act, 36 C.F.R., Part 59.

(b) ((Fees:)) User ((and/or)) or other fees may be charged in connection with land acquired or facilities developed with ((committee)) board grants if the fees are consistent with the:

(i) Value of any service(s) furnished; ((and))
(ii) Value of any ((opportunity(ies))) opportunities furnished; and

(iii) Prevailing range of public fees in the state for the activity involved.

(iv) Excepted are firearms and archery range recreation program safety classes (firearm and/or hunter) for which a facility/range fee must *not* be charged (RCW ((77.12.720))) 79A.25.210).

(2) ((Income use:)) Regardless of whether income or fees in a ((committee assisted)) project area (including entrance, utility corridor permit, cattle grazing, timber harvesting, farming, etc.) are gained during or after the reimbursement period cited in the project agreement, unless precluded by state or federal law, the revenue may only be used to offset:

- (a) The sponsor's matching ((funds; and/or)) resources;
- (b) The project's total cost; ((and/or))
- (c) The expense of operation, maintenance, ((and/or)) stewardship, monitoring, or repair of the facility or program assisted by the ((committee)) board's grant; ((and/or))
- (d) The expense of operation, maintenance, ((and/or)) stewardship, monitoring or repair of other similar units in the

sponsor's ((~~park and recreation and/or habitat conservation~~)) system; ((~~and/or~~)) or

(e) Capital expenses for similar acquisition ((~~and/or~~)) or development.

AMENDATORY SECTION (Amending WSR 97-17-004, filed 8/7/97, effective 9/7/97)

WAC 286-13-115 Discrimination, preferences. (1) Sponsors shall not discriminate against users of projects assisted with ((~~eecommittee~~)) board funds on the basis of race, creed, color, sex, religion, national origin, disability, marital status, or sexual orientation.

(2) Sponsors shall not express a preference for users of ((~~eecommittee~~)) board grant assisted projects on the basis of residence (including preferential reservation, membership, and/or permit systems). However, reasonable differences in admission and other fees may be maintained on the basis of residence. The ((~~eecommittee~~)) board does not encourage the imposition of such differential fees. Fees for nonresidents must not exceed twice the fee imposed on residents. Where there is no fee for residents but a fee is charged to nonresidents, the nonresident fee shall not exceed the amount that would be imposed on residents at comparable state or local public facilities.

AMENDATORY SECTION (Amending WSR 94-17-095, filed 8/17/94, effective 9/17/94)

WAC 286-13-120 Permanent project signs. Permanent signs identifying that land was acquired ((~~or facilities~~)), developed or restored with financial assistance from the ((~~eecommittee~~)) board are required unless waived by the director. Such waivers are considered based on agreed project goals.

AMENDATORY SECTION (Amending WSR 96-08-044, filed 3/29/96, effective 4/29/96)

WAC 286-26-010 Scope of chapter. This chapter contains rules affecting the nonhighway and off-road vehicle activities grant program administered by the ((~~eecommittee~~)) board under chapter 46.09 RCW. Additional provisions are contained in "What definitions apply to this chapter?" WAC 286-04-010 and "General grant assistance rules((~~;~~)) chapter 286-13 WAC.

AMENDATORY SECTION (Amending WSR 05-01-030, filed 12/3/04, effective 1/3/05)

WAC 286-26-020 What definitions apply to this chapter? For purposes of this chapter, the following definitions shall apply:

"Management" means the action taken in exercising control over, regulating the use of, and operation and maintenance of ORV trails and ORV areas.

"NOVA" means the ((~~eecommittee's~~)) board's nonhighway and off-road vehicle activities program described in chapter 46.09 RCW.

"NOVA advisory committee" as provided in RCW ((~~46.09.280~~)) 46.09.340, means the panel of representatives

chosen to advise the director in the development of the state-wide NOVA plan, the development of a project priority rating system, the suitability and evaluation of NOVA projects submitted to the ((~~eecommittee~~)) board for funding, and other aspects of NOVA recreation as the need may arise, in accordance with chapter 46.09 RCW.

"Off-road vehicle" ((~~ORV~~)) as provided in RCW ((~~46.09.020~~)) 46.04.365.

"ORV sport park" as provided in RCW ((~~46.09.020~~)), means a facility that accommodates racing two, three, and/or four-wheel ORVs, and four wheeled vehicles over forty inches width which are equipped with four-wheel drive or other characteristics such as nonslip drive trains and high clearance. Such courses include ORV trail or area characteristics such as sharp turns, jumps, soft tread material, dips, or other obstacles found in more natural settings) 46.09.310. Race courses which are paved and designed primarily for other vehicles, such as go-karts and formula cars, are not eligible for funds from the NOVA program account.

AMENDATORY SECTION (Amending WSR 05-01-030, filed 12/3/04, effective 1/3/05)

WAC 286-26-080 Does this program have planning eligibility requirements? Yes. To be eligible for grant consideration under this chapter, applicants must complete a plan in accordance with WAC 286-13-040(2), except that such a plan is not required to support a funding request for education((~~;~~)) and enforcement ((~~and~~)) or maintenance((~~;~~)) and operation projects. At minimum the plan must include:

(1) A statement of the applicant's long-range goals and objectives;

(2) An inventory((~~, or description of the planning area~~));

(3) An analysis of demand and need, that is, why actions are required;

(4) A description of how the planning process gave the public ample opportunity to be involved in development of the plan;

(5) A current capital improvement program of at least six years; and

(6) Evidence that this plan has been approved by the applicant's governing entity most appropriate to the plan's scope. For example, a city or county-wide plan must be approved at the council or commission level. Plans with a different scope will be approved by department heads, district rangers, regional managers/supervisors, etc.

AMENDATORY SECTION (Amending WSR 05-01-030, filed 12/3/04, effective 1/3/05)

WAC 286-26-083 What long term rules apply? (1) Without prior approval of the ((~~eecommittee~~)) board, land, natural resources and/or facilities purchased and/or developed with ((~~eecommittee~~)) board administered NOVA funds shall not be converted to uses other than those for which the funds were originally approved.

(2) The ((~~eecommittee~~)) board is entitled to pursue and obtain remedies that assure the substitution or replacement of natural resources or facilities in accordance with this chapter.

AMENDATORY SECTION (Amending WSR 05-01-030, filed 12/3/04, effective 1/3/05)

WAC 286-26-085 When considering approval of a conversion, what rules apply? The ((committee)) board shall only approve conversions when:

(1) All practical alternatives to the conversion have been evaluated and rejected on a sound basis; and

(2) Another resource(s) will serve as a replacement. The replacement resource(s) must:

(a) ((f)) If a land acquisition((f)), be real ((property(ies))) property of at least equal fair market value and public benefit at the time of conversion;

(b) ((f)) If a development((f)), provide a facility of at least equal fair market value and public benefit as that which existed at the time of the original investment;

(c) Be of reasonably equivalent or greater recreation usefulness and location;

(d) Be administered by the same political jurisdiction as the converted property ((and)) or development;

(e) Satisfy ((need(s))) needs identified in the ((committee's)) board's or sponsor's plan; and

(f) Include only elements eligible under the ((committee's)) board's program from which funds were originally allocated.

AMENDATORY SECTION (Amending WSR 05-01-030, filed 12/3/04, effective 1/3/05)

WAC 286-26-090 For land acquisition projects, are there long term obligations? Yes. Sponsors must execute an instrument(s) containing:

(1) For fee or perpetual property rights acquisition projects:

(a) A legal description of the property acquired;

(b) A conveyance to the state of Washington for the right to use the described real property for outdoor recreation purposes forever unless a term is specified in the project agreement; and

(c) A prohibition on conversion of use of the land to a principal use other than that for which funds were originally approved without prior approval of the ((committee)) board.

(2) For lease, less than fee, or nonperpetual property rights, a binding agreement which:

(a) Contains a legal description of the property and rights acquired;

(b) Contains a conveyance to the state of Washington for the right to use the described real property for outdoor recreation purposes for the period of the lease;

(c) Contains a prohibition on conversion of use of the land/natural resource to a principal use other than that for which funds were originally approved without prior approval of the ((committee)) board;

(d) Is for at least twenty-five years unless precluded by state law;

(e) Is not revocable at will;

(f) Has a value supported through appraisal requirements approved by the ((committee)) board; and

(g) Is paid for in lump sum at initiation.

AMENDATORY SECTION (Amending WSR 05-01-030, filed 12/3/04, effective 1/3/05)

WAC 286-26-100 For development projects, are there long term obligations? Yes.

(1) Properties and facilities assisted with money granted by the ((committee)) board shall not be converted (WAC 286-26-083(1)).

(2) Properties and facilities assisted with money granted by the ((committee)) board shall be:

(a) Built, operated, used, and maintained according to federal, state, and local laws and regulations, including public health standards and building codes;

(b) Built, operated, used, and maintained in a reasonably safe condition for the project's intended use;

(c) Operated and maintained throughout its estimated life so as to prevent undue deterioration; and

(d) Built and operated in compliance with all federal and state nondiscrimination laws, regulations, and policies.

(3) Facilities open to the public must:

(a) Be built, operated, and maintained according to state and federal accessibility guidelines(());

(b) Appear attractive and inviting to the public except for brief installation, construction, or maintenance periods(()); and

(c) Be available for use at reasonable hours and times of the year, according to the type of area or facility.

AMENDATORY SECTION (Amending WSR 05-01-030, filed 12/3/04, effective 1/3/05)

WAC 286-26-105 What provisions apply to federal agencies? A ((committee-federal)) board-federal agency agreement signed by the parties shall control the provision of funds granted by the ((committee)) board for facility developments to federal agency sponsored projects. Absent this agreement, the ((general provisions)) standard terms and conditions of ((committee's)) board's project agreement shall control.

AMENDATORY SECTION (Amending WSR 98-08-014, filed 3/18/98, effective 4/18/98)

WAC 286-26-110 Matching amounts and caps determined. The ((committee)) board will establish ((NOVA program)) sponsor matching share requirements and fund request limits. Any changes will normally be done at a ((committee)) board meeting six months before program funding consideration.

AMENDATORY SECTION (Amending WSR 06-05-025, filed 2/7/06, effective 3/10/06)

WAC 286-27-010 What is the purpose of this chapter? This chapter contains rules affecting the Washington wildlife and recreation grant program ((WWRP)) administered by the ((committee)) board under chapter 79A.15 RCW. Additional provisions are contained in "What definitions apply to this chapter?" WAC 286-04-010 and "General grant assistance rules(())" chapter 286-13 WAC. These mon-

eys are available through the ((ecommittee)) board for projects in the following accounts and categories:

- (1) Farmlands preservation account(());
- (2) Habitat conservation account:
 - (a) Critical habitat category;
 - (b) Natural areas category;
 - (c) Urban wildlife habitat category; and
 - (d) ((~~Restoration enhancement on state lands category.~~))

State lands restoration and enhancement category.

- (3) Outdoor recreation account:
 - (a) State parks category;
 - (b) Local parks category;
 - (c) Trails category;
 - (d) Water access category; and
 - (e) ((~~Development renovation on state lands category.~~))

State lands development and renovation category.

- (4) Riparian protection account.

AMENDATORY SECTION (Amending WSR 06-05-025, filed 2/7/06, effective 3/10/06)

WAC 286-27-040 Does the ((WWRP)) program have planning eligibility requirements? Yes. Except as noted under subsection (2) of this section, to be eligible for grant consideration under this chapter, applicants must complete a plan in accordance with WAC 286-13-040(2).

- (1) At a minimum the plan must include:
 - (a) A statement of the applicant's long-range goals and objectives;
 - (b) An inventory((, or description of the planning area));
 - (c) An analysis of demand and need, that is, why actions are required;
 - (d) A description of how the planning process gave the public ample opportunity to be involved in development of the plan;
 - (e) A current capital improvement program of at least six years; and
 - (f) Evidence that this plan has been approved by the applicant's governing entity. For example, a city plan would be approved at the council level and a county-wide plan at the county council or commission level. Plans with a different scope would be approved by department heads, regional managers/supervisors, etc.(())
- (2) A plan is not required for projects submitted in the farmlands preservation account.

AMENDATORY SECTION (Amending WSR 06-05-025, filed 2/7/06, effective 3/10/06)

WAC 286-27-045 What is a conversion of use? A "conversion" occurs when interests in real property and facilities acquired, developed, renovated, enhanced or restored ((with WWRP funds)) are converted to uses other than those for which the funds were originally approved and described in the project agreement ((with the committee)). Interests in real property include, but are not limited to, options, rights of first refusal, conservation easements, leases, and mineral rights.

AMENDATORY SECTION (Amending WSR 06-05-025, filed 2/7/06, effective 3/10/06)

WAC 286-27-055 Are there long-term obligations for acquiring interest in real property? Yes. Sponsors must execute an instrument(s) containing these provisions:

- (1) For acquisition of perpetual interest in real property:
 - (a) A legal description of the property acquired;
 - (b) A conveyance to the state of Washington of the right to use the described real property for farmland, habitat conservation, and/or outdoor recreation purposes; and
 - (c) Except as provided in WAC 286-27-066, agreement to a prohibition on conversion of use.
- (2) For acquisition of nonperpetual interest in real property:
 - (a) A legal description of the property and a description of the interests acquired;
 - (b) A conveyance to the state of Washington of the right to use the described real property for farmland, habitat conservation, and/or outdoor recreation purposes for the term of the lease or easement;
 - (c) Except as provided in WAC 286-27-066, agreement to a prohibition on conversion of use;
 - (d) A lease(s) or easement(s) period of at least fifty years except for:
 - (i) Farmlands preservation account projects which shall be for at least twenty-five years; or
 - (ii) Projects that extend conservation reserve enhancement program leases which shall be for at least twenty-five years(());
 - (e) Is not revocable at will;
 - (f) Has a value supported through appraisal methods approved by the ((ecommittee)) board; and
 - (g) Terms of payment between the sponsor and seller.

AMENDATORY SECTION (Amending WSR 06-05-025, filed 2/7/06, effective 3/10/06)

WAC 286-27-061 Are there long-term obligations for restoration projects? Yes.

(1) Unless otherwise approved by the ((ecommittee)) board, environmental restoration and enhancement projects ((granted WWRP funds)) must continue to provide the functions for which the funds were originally approved and not be converted to any other use.

(2) When approving such a conversion, the ((ecommittee)) board shall require the ((grant recipient)) sponsor or successor to provide for environmental restoration or enhancement as a replacement. When approving the replacement, ((ecommittee)) board considerations shall include the intended ecological benefits of the replacement compared to those of the original project and likelihood that the replacement project will be successful.

AMENDATORY SECTION (Amending WSR 06-05-025, filed 2/7/06, effective 3/10/06)

WAC 286-27-065 Are there long-term obligations for development projects? Yes.

(1) Properties, structures, and facilities developed with the assistance of money granted by the ((ecommittee)) board

shall not be converted except as provided in WAC 286-27-066.

(2) Properties, structures, and facilities developed with the assistance of money granted by the ((committee)) board shall be built, operated, and maintained according to applicable regulations, laws, building codes, and health standards to assure a reasonably safe condition and to prevent premature deterioration.

(3) Properties, structures, and facilities intended for public use shall meet state and federal accessibility guidelines and nondiscrimination laws, regulations, and policies; be maintained to a standard that encourages use; and be open and available to the public at reasonable hours and times of the year.

AMENDATORY SECTION (Amending WSR 06-05-025, filed 2/7/06, effective 3/10/06)

WAC 286-27-066 What additional rules apply to conversions of use? (1) Except as provided in this section, interest in real property and facilities acquired, developed, renovated, enhanced or restored ((with WWRP funds)) shall not, without prior approval of the ((committee)) board be converted to uses other than those for which the funds were originally approved.

(2) The ((committee)) board shall assure the substitution or replacement of interest in real property and/or facilities in accordance with this chapter.

(3) The ((committee)) board shall only approve conversions when:

(a) All practical alternatives to the conversion have been evaluated and rejected; and

(b) The sponsor or successor will provide another interest in real property(s) and/or facilities to serve as a replacement. The replacement must:

(i) Be of equivalent or greater usefulness and location;

(ii) Be administered by the same sponsor or successor unless otherwise approved by the ((committee)) board;

(iii) Satisfy need(s) identified in the most recent plan(s) required under WAC 286-27-040;

(iv) Be eligible to receive a grant in the WWRP account or category from which funds were originally allocated, unless otherwise authorized by the ((committee)) board;

(v) If acquisition of interests in real property: Be interest in real property(ies) of at least equal market value and public benefit at the time of replacement;

(vi) If a development: Provide a facility of at least equal market value and public benefit as that which existed at the time of the original investment of WWRP funds; and

(vii) If a restoration or enhancement project: Provide restoration or enhancement activities necessary to replicate the ecological benefit intended by the project.

(4) Projects authorized by the Interstate Commerce Commission under section 8(d) of the National Trails System Act, 16 U.S.C. § 1247(d) shall convert to railroad purposes automatically upon reactivation of a line for rail purposes under an ICC order. Substitution or replacement with interest in real property, facilities or moneys which are of at least equal market value at the time of replacement may be required.

AMENDATORY SECTION (Amending WSR 06-05-025, filed 2/7/06, effective 3/10/06)

WAC 286-27-071 What rules apply to the sale of farmland? (1) Any moneys from the sale of farmland acquired by a city or county in fee simple with farmlands preservation account funds, along with any net income derived from agricultural activities on the property, shall be returned to the farmlands preservation account, or, used by the city or county to purchase interests in additional farmland properties. The city or county may deduct expenses associated with the transaction and management of the property as authorized by the ((committee)) board.

(2) The sale of the farmland and use of funds to purchase additional farmland properties must be approved by the ((committee)) board.

AMENDATORY SECTION (Amending WSR 06-05-025, filed 2/7/06, effective 3/10/06)

WAC 286-27-075 Are matching resources required—Are there caps? Yes. Consistent with RCW 79A.15.060 (4) ((and)) 79A.15.070(4), 79A.15.120(7), and 79A.15.130 (8) the ((committee)) board will establish sponsor matching share requirements and fund request limits.

AMENDATORY SECTION (Amending WSR 96-08-044, filed 3/29/96, effective 4/29/96)

WAC 286-30-010 Scope. This chapter contains rules affecting the firearms and archery range recreation grant program administered by the ((committee)) board under RCW ((77.12.720)) 79A.25.210. Additional provisions are contained in "What definitions apply to this chapter?" WAC 286-04-010 and "General grant assistance rules((;))" chapter 286-13 WAC.

AMENDATORY SECTION (Amending WSR 96-08-044, filed 3/29/96, effective 4/29/96)

WAC 286-30-030 Acquisition projects—Deed of right, conversions, leases and easements. ((For acquisition projects, sponsors must execute an instrument or instruments that contain:)) (1) For fee, less-than-fee, and easement acquisition projects sponsors must execute an instrument or instruments that contain:

(a) A legal description of the property acquired;

(b) A conveyance to the state of Washington of the right to use the described real property ((for at least ten years from the date of the committee's final reimbursement)) for outdoor recreation purposes; and

(c) A restriction on conversion of use of the land ((for at least ten years from the date of the committee's final reimbursement, with the proviso that should use be discontinued or a noncommittee approved conversion occur, the sponsor shall pay back to the committee the entire grant amount. That is, without prior approval of the committee, a facility acquired with money granted by the committee shall not, within ten years, be converted)) to a use other than that for which funds were originally approved. ((The committee shall only approve such a conversion under conditions which

assure the substitution of other land of at least equal fair market value at the time of conversion, and of as nearly as feasible equivalent usefulness and location.)

(2) For lease acquisition projects((,)) sponsors must execute a binding agreement which contains a legal description of the property and rights acquired and which meets the following criteria. The ((interest)) agreement:

(a) Must be for at least ten years from the date of the ((committee's)) office's final reimbursement unless precluded by state law;

(b) May not be revocable at will;

(c) Must have a value supported through standard appraisal techniques;

(d) Must be paid for in lump sum at initiation; and

(e) May not be converted during the lease period((,)) to a use other than that for which funds were originally approved((,)) without prior approval of the ((committee)) board.

(3) If a conversion occurs less than ten years after the office's final reimbursement, the board shall approve such a conversion under the following conditions:

(a) All practical alternatives to the conversion have been evaluated and rejected on a sound basis;

(b) The sponsor shall pay back the entire grant amount to the firearms range account; and

(c) The sponsor shall comply with other board adopted policies as applicable.

(4) If a conversion occurs ten or more years after the office's final reimbursement, the board shall approve such a conversion under conditions which assure:

(a) The substitution of other land of at least equal fair market value at the time of conversion and nearly as feasible equivalent usefulness and location as the original project; or

(b) By other remedy as adopted by the board to satisfy the conversion of use.

AMENDATORY SECTION (Amending WSR 94-17-095, filed 8/17/94, effective 9/17/94)

WAC 286-30-040 Development projects—Conversion to other uses. (1) ((Within ten years of the committee's final reimbursement, and without prior approval of the committee,)) A facility developed with money granted by the ((committee)) board shall not be converted to a use other than that for which funds were originally approved. ((Should a thus prohibited conversion occur, the sponsor shall pay back to the committee the entire grant amount.

(2) The committee shall only approve such a conversion under conditions which assure that:

(a) All practical alternatives to the conversion have been evaluated and rejected on a sound basis;

(b) A new development, in the spirit of WAC 286-13-080 ("...aid through the committee is intended to supplement the existing capacity of a sponsor..."), will serve as a replacement which:

(i) Is of reasonably equivalent recreation utility and location;

(ii) Will be administered by the same political jurisdiction or entity as the converted development; and

(iii) Includes only elements eligible under the committee's program from which funds were originally allocated.))

(2) If a conversion occurs less than ten years after the office's final reimbursement, the board shall approve such a conversion under the following conditions:

(a) All practical alternatives to the conversion have been evaluated and rejected on a sound basis;

(b) The sponsor pays back the entire grant amount to the firearms range account; and

(c) The sponsor shall comply with other board adopted policies as applicable.

(3) This section does not apply to development projects ten or more years after the office's final reimbursement.

AMENDATORY SECTION (Amending WSR 98-08-014, filed 3/18/98, effective 4/18/98)

WAC 286-30-050 Matching requirements and caps determined. The ((committee)) board will establish sponsor matching share requirements and fund request limits. Any changes will normally be done at a ((committee)) board meeting six months before project funding consideration.

AMENDATORY SECTION (Amending WSR 94-17-095, filed 8/17/94, effective 9/17/94)

WAC 286-35-010 Scope. This chapter contains rules affecting the ((Initiative 215)) boating facilities ((grant)) program administered by the ((committee)) board under the Marine Recreation Land Act, chapter ((43.99)) 79A.25 RCW. Additional provisions are contained in "What definitions apply to this chapter?" WAC 286-04-010 and "General grant assistance rules((,))" chapter 286-13 WAC.

AMENDATORY SECTION (Amending WSR 97-08-003, filed 3/20/97, effective 4/20/97)

WAC 286-35-030 Planning requirements. To be eligible for grant consideration under this chapter, applicants must complete a plan in accordance with WAC 286-13-040(2). At minimum the plan must include:

(1) A statement of the applicant's long-range goals and objectives;

(2) An inventory((, or description of the planning area));

(3) An analysis of demand and need, that is, why actions are required;

(4) A description of how the planning process gave the public ample opportunity to be involved in development of the plan;

(5) A current capital improvement program of at least ((five)) six years; and

(6) Evidence that this plan has been approved by the applicant's governing entity most appropriate to the plan's scope. For example, a city or county-wide plan must be approved at the council or commission level. Plans with a different scope will be approved by department heads, district rangers, regional managers/supervisors, etc.

AMENDATORY SECTION (Amending WSR 98-08-014, filed 3/18/98, effective 4/18/98)

WAC 286-35-060 Matching requirements and caps determined. The ((~~committee~~) board will establish sponsor matching share requirements and acquisition-development fund request limits. Any changes will normally be done at a ((~~committee~~) board meeting six months before project funding consideration.

AMENDATORY SECTION (Amending WSR 94-17-095, filed 8/17/94, effective 9/17/94)

WAC 286-35-080 Acquisition projects—Deed of right, conversions, leases and easements. For acquisition projects, sponsors must execute an instrument or instruments which contain:

(1) For fee, less-than-fee, and easement acquisition projects:

(a) A legal description of the property acquired;

(b) A conveyance to the state of Washington of the right to use the described real property forever for outdoor recreation purposes; and

(c) A restriction on conversion of use of the land.

That is, marine recreation land with respect to which money has been expended under RCW ((43.99.080)) 79A.25.080 shall not, without the approval of the ((~~committee~~) board, be converted to uses other than those for which such expenditure was originally approved. The ((~~committee~~) board shall only approve any such conversion upon conditions which will assure the substitution of other marine recreation land of at least equal fair market value at the time of conversion and of as nearly as feasible equivalent usefulness and location.

(2) For lease acquisition projects, a binding agreement which contains a legal description of the property and rights acquired and which meets the following criteria. The interest:

(a) Must be for at least fifty years unless precluded by state law;

(b) May not be revocable at will;

(c) Must have a value supported through standard appraisal techniques;

(d) Must be paid for in lump sum at initiation; and

(e) May not be converted, during the lease period, to a use other than that for which funds were originally approved, without prior approval of the ((~~committee~~) board.

AMENDATORY SECTION (Amending WSR 94-17-095, filed 8/17/94, effective 9/17/94)

WAC 286-35-090 Development projects—Conversion to other uses. (1) Without prior approval of the ((~~committee~~) board, a facility developed with money granted by the ((~~committee~~) board shall not be converted to a use other than that for which funds were originally approved.

(2) The ((~~committee~~) board shall only approve such a conversion under conditions which assure that:

(a) All practical alternatives to the conversion have been evaluated and rejected on a sound basis; and

(b) A new development((, in the spirit of WAC 286-13-080 ("...aid through the committee is intended to supplement

~~the existing capacity of a sponsor..."))~~ will serve as a replacement which:

(i) Is of reasonably equivalent recreation utility and location;

(ii) Will be administered by the same political jurisdiction as the converted development; and

(iii) Includes only elements eligible under the ((~~committee~~) board's program from which funds were originally allocated.

AMENDATORY SECTION (Amending WSR 96-08-044, filed 3/29/96, effective 4/29/96)

WAC 286-40-010 Scope. This chapter contains rules affecting the federal land and water conservation fund program administered by the ((~~committee~~) board. These funds are administered pursuant to the Land and Water Conservation Fund Act of 1965 (Public Law 88-578, 78 stat 897)((, and the *Land and Water Conservation Fund Grants Manual* (U.S. Department of the Interior, National Park Service))). Under the terms of this program many federal requirements are imposed on both applicants and the ((~~committee~~) board over which the ((~~committee~~) board has no control. Most of these federal requirements are restated or clarified in the manuals. Additional provisions are contained in "What definitions apply to this chapter?" WAC 286-04-010 and "General grant assistance rules((;))" chapter 286-13 WAC.

AMENDATORY SECTION (Amending WSR 01-17-056, filed 8/14/01, effective 9/14/01)**WAC 286-40-020 Funding and candidate selection.**

Funding for projects approved under this chapter is from any eligible account administered by the ((~~committee~~) board. Candidate project(s) are recommended by the director, and approved by the ((~~committee~~) board. Selection criteria include:

(1) How well the project(s) has ranked in the evaluation;

(2) How well the project(s) meets needs identified in the statewide comprehensive outdoor recreation planning program and the general goals identified in WAC 286-04-030;

(3) How well the project(s) meets the criteria in the Land and Water Conservation Fund Grants Manual; and

(4) An assessment of how quickly the project(s) will progress through planning and implementation stages.

AMENDATORY SECTION (Amending WSR 96-08-044, filed 3/29/96, effective 4/29/96)

WAC 286-40-030 Matching requirements. (1) Local agencies. The ((~~committee~~) board shall only approve local agency projects when the applicant's share is at least equal to the ((~~committee~~) board amount awarded.

(2) State agencies. If federal matching money is available, state agency sponsors may be assisted by ((~~committee~~) board funds to meet federal matching requirements.

AMENDATORY SECTION (Amending WSR 94-17-095, filed 8/17/94, effective 9/17/94)

WAC 286-40-040 Projects eligible for funding. Only those acquisition and development costs eligible under the federal Land and Water Conservation Fund Act as specified in that program's manual will be eligible for consideration by the ~~((e)committee)) board~~. However, from time to time the ~~((e)committee)) board~~ may decide as a matter of policy that certain project costs are ineligible irrespective of how those costs are treated under the Land and Water Conservation Fund Act.

AMENDATORY SECTION (Amending WSR 94-17-095, filed 8/17/94, effective 9/17/94)

WAC 286-40-050 Acquisition projects—Deed of right, conversions, leases and easements. For acquisition projects, sponsors must execute an instrument or instruments which contain:

(1) For fee, less-than-fee, and easement acquisition projects:

(a) A legal description of the property acquired;

(b) A conveyance to the state of Washington of the right to use the described real property forever for outdoor recreation purposes; and

(c) A restriction on conversion of use of the land. That is, without prior approval of the ~~((e)committee)) board~~, a facility acquired with money granted by the ~~((e)committee)) board~~ shall not be converted to a use other than that for which funds were originally approved. The ~~((e)committee)) board~~ shall only approve such a conversion under conditions which assure the substitution of other land of at least equal fair market value at the time of conversion, and of as nearly as feasible equivalent usefulness and location.

(2) For lease acquisition projects, a binding agreement which contains a legal description of the property and rights acquired and which meets the following criteria. The interest:

(a) Must be for at least fifty years unless precluded by state law;

(b) May not be revocable at will;

(c) Must have a value supported through standard appraisal techniques;

(d) Must be paid for in lump sum at initiation; and

(e) May not be converted, during the lease period, to a use other than that for which funds were originally approved, without prior approval of the ~~((e)committee)) board~~.

AMENDATORY SECTION (Amending WSR 94-17-095, filed 8/17/94, effective 9/17/94)

WAC 286-40-060 Development projects—Conversion to other uses. (1) Without prior approval of the ~~((e)committee)) board~~, a facility developed with money granted by the ~~((e)committee)) board~~ shall not be converted to a use other than that for which funds were originally approved.

(2) The ~~((e)committee)) board~~ shall only approve such a conversion under conditions which assure that:

(a) All practical alternatives to the conversion have been evaluated and rejected on a sound basis; and

(b) A new development~~((, in the spirit of WAC 286-13-080 ("...aid through the committee is intended to supplement the existing capacity of a sponsor..."))~~ will serve as a replacement which:

(i) Is of at least equal fair market value and of reasonably equivalent recreation usefulness and location;

(ii) Will be administered by the same political jurisdiction as the converted development; and

(iii) Includes only elements eligible under the ~~((e)committee's)) board~~'s program from which funds were originally allocated.

AMENDATORY SECTION (Amending WSR 05-01-030, filed 12/3/04, effective 1/3/05)

WAC 286-42-010 What is the purpose of this chapter? This chapter provides rules affecting the aquatic lands enhancement account ~~((ALEA))~~ grant program administered by the ~~((e)committee)) board~~ under RCW ~~((79.90.245 and section 377, chapter 26, Laws of 2003, 1st sp. sess))~~ 79.105.150. Additional provisions are contained in "What definitions~~((;))~~ apply to this chapter?" WAC 286-04-010 and "General grant assistance rules~~((;))~~" chapter 286-13 WAC.

AMENDATORY SECTION (Amending WSR 05-01-030, filed 12/3/04, effective 1/3/05)

WAC 286-42-020 What organizations may receive ~~((ALEA))~~ grants? Through the ~~((e)committee, ALEA)) board~~, grants are available to any division of local or state government and Native American tribe that is eligible to apply and that is legally authorized to acquire and develop public open space, habitat, recreation lands, and/or natural resources.

AMENDATORY SECTION (Amending WSR 05-01-030, filed 12/3/04, effective 1/3/05)

WAC 286-42-040 What long term rules apply? (1) Without prior approval of the ~~((e)committee)) board~~, land, natural resources and/or facilities purchased and/or developed with ~~((e)committee)) board~~ administered ~~((ALEA))~~ funds shall not be converted to uses other than those for which funds were originally approved.

(2) The ~~((e)committee)) board~~ is entitled to pursue and obtain remedies that assure the substitution or replacement of natural resources or facilities in accordance with this chapter.

AMENDATORY SECTION (Amending WSR 05-01-030, filed 12/3/04, effective 1/3/05)

WAC 286-42-050 When considering approval of a conversion, what rules apply? The ~~((e)committee)) board~~ shall only approve conversions when:

(1) All practical alternatives to the conversion have been evaluated and rejected on a sound basis; and

(2) Another resource(s) will serve as a replacement. The replacement resource(s) must:

(a) ~~((f))~~If a land acquisition~~((;))~~ be real property of at least equal fair market value and public benefit at the time of conversion;

- (b) ((f)) If a development((f)), provide a facility of at least equal fair market value and public benefit as that which existed at the time of the original investment;
- (c) Be of reasonably equivalent or greater recreation and habitat usefulness and location;
- (d) Be administered by the same political jurisdiction as the converted property and/or development;
- (e) Satisfy need(s) identified in the ((committee's)) board's or sponsor's plan; and
- (f) Include only elements eligible under the ((committee's)) board's program from which funds were originally allocated.

AMENDATORY SECTION (Amending WSR 05-01-030, filed 12/3/04, effective 1/3/05)

WAC 286-42-060 For land acquisition projects, are there long term obligations? Yes. Sponsors must execute an instrument(s) containing:

- (1) For fee or perpetual property rights acquisition projects:
 - (a) A legal description of the property acquired;
 - (b) A conveyance to the state of Washington for the right to use the described real property for habitat conservation and/or outdoor recreation purposes forever unless a term is specified in the project agreement; and
 - (c) A prohibition on conversion of use of the land/natural resource to a principal use other than that for which funds were originally approved without prior approval of the ((committee)) board.
- (2) For lease, less than fee, or nonperpetual property rights, a binding agreement which:
 - (a) Contains a legal description of the property and rights acquired;
 - (b) Contains a conveyance to the state of Washington for the right to use the described real property for habitat conservation and/or outdoor recreation purposes for the period specified;
 - (c) Contains a prohibition on conversion of use of the land/natural resource to a principal use other than that for which funds were originally approved without prior approval of the ((committee)) board;
 - (d) Is for at least twenty-five years unless precluded by state law;
 - (e) Is not revocable at will;
 - (f) Has a value supported through appraisal requirements approved by the ((committee)) board; and
 - (g) Is paid for in lump sum at initiation.

AMENDATORY SECTION (Amending WSR 05-01-030, filed 12/3/04, effective 1/3/05)

WAC 286-42-080 For development projects, are there long term obligations? Yes.

- (1) Properties and facilities assisted with moneys granted by the ((committee)) board shall not be converted (WAC 286-42-040(1)).
- (2) Properties and facilities assisted with moneys granted by the ((committee)) board shall be:

(a) Built, operated, used, and maintained according to federal, state, and local laws and regulations, including public health standards and building codes;

(b) Built, operated, used, and maintained in a reasonably safe condition for the project's intended use;

(c) Operated and maintained throughout its estimated life so as to prevent undue deterioration; and

(d) Built and operated in compliance with all federal and state nondiscrimination laws, regulations, and policies.

(3) Facilities open to the public must:

(a) Be built, operated, and maintained according to state and federal accessibility guidelines;

(b) Appear attractive and inviting to the public except for brief installation, construction, or maintenance periods; and

(c) Be available for use at reasonable hours and times of the year, according to the type of area or facility.

AMENDATORY SECTION (Amending WSR 05-01-030, filed 12/3/04, effective 1/3/05)

WAC 286-42-090 Must a grant recipient provide matching funds for the project—Are grant amounts limited? Yes. The ((committee)) board establishes sponsor matching share requirements and fund request limits. Any changes to current requirements are normally made at a ((committee)) board meeting six months before program funding consideration.

WSR 14-06-070
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Aging and Long-Term Support Administration)

[Filed March 3, 2014, 10:17 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-08-077.

Title of Rule and Other Identifying Information: The department is amending chapter 388-71 WAC, Home and community services and programs.

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), on April 8, 2014, at 10:00 a.m.

Date of Intended Adoption: Not earlier than April 9, 2014.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAU RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., April 8, 2014.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by March 25, 2014, TTY (360) 664-6178 or (360) 664-6094 or by e-mail jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending chapter 388-71 WAC, specifically the home care

referral registry (HCRR), in order to make program revisions by bringing the HCRR WAC into alignment with the individual provider WAC. Rules pertaining to the HCRR's individual providers must reflect changes to the individual provider WAC that went into effect January 2013.

Reasons Supporting Proposal: Amendments are necessary to make program revisions by bringing the HCRR WAC into alignment with the individual provider WAC. Rules pertaining to the HCRR's individual providers must reflect changes to the individual provider WAC that went into effect January 2013.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Statute Being Implemented: RCW 74.08.090, 74.09.520.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Andrea Meewes-Sanchez, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2554.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The preparation of a small business economic impact statement is not required, as no new costs will be imposed on small businesses or nonprofits as a result of this rule amendment.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are exempt per RCW 34.05.328 (5)(b)(v), rules the content of which are explicitly and specifically dictated by statute.

February 26, 2014
Katherine I. Vasquez
Rules Manager

AMENDATORY SECTION (Amending WSR 11-13-009, filed 6/3/11, effective 7/4/11)

WAC 388-71-06020 What is the purpose of WAC 388-71-06020 through ((388-71-06420)) 388-71-06165?
The purpose of this chapter is to describe the operation of the home care referral registry.

AMENDATORY SECTION (Amending WSR 11-13-009, filed 6/3/11, effective 7/4/11)

WAC 388-71-06040 What definitions apply to WAC 388-71-06020 through ((388-71-06420)) 388-71-06165?
The following definitions apply to WAC 388-71-06020 through ((388-71-06420)) 388-71-06165:

((("AAA" means the local area agency on aging.))

((("ALJ" means administrative law judge.))

"Applicant" is a person who is applying to be placed on the referral registry as a prospective individual provider or individual provider and who has not completed all required steps and screening.

"Consumer(((employer)))" means an adult or child with functional or developmental disabilities who qualifies for and uses personal care or respite care paid for through medicaid or state-only funds and who chooses to use the referral registry to find and employ an individual. Consumer also includes

an individual who is acting as a representative on behalf of the consumer.

((("Consumer representative" means an individual who is acting on behalf of the consumer/employer.))

"Department" or "DHS" means the department of social and health services, including but not limited to the department's developmental disabilities administration and aging and long-term support administration.

((("Emergency provider" means an individual provider who is employed as a back-up for a provider who did not show up or who was unable to work due to unexpected circumstances.))

"Employer" means the consumer.))

"HCRR" means the home care referral registry.

((("Home care referral registry operations" or "referral registry operations" means the activities carried out at the local level to recruit and register individual providers or prospective individual providers for the referral registry and assist consumers to utilize the referral registry to find qualified individual providers.))

"Individual provider" or "IP" means a person, ((regardless of relationship,)) including a personal aide ((working for a consumer under self directed care, who has a contract with the department of social and health services to provide personal care or respite care services to adults or children with functional or developmental disabilities and is reimbursed for those services through medicaid or state-only funding)), who is employed by a consumer and who has a contract with the department to provide personal care services or respite care services under chapter 388-71 or 388-825 WAC.

((("IP" means an individual provider.))

"Malfeasance" means any unlawful act committed by the provider, whether in the course of employment or otherwise.

"Mandatory reporter" is an employee of DHS; law enforcement officer; social worker; professional school personnel; individual provider; an employee of a facility; an operator of a facility; an employee of a social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agency; county coroner or medical examiner; Christian science practitioner; or health care provider subject to chapter 18.130 RCW.

"Misfeasance" means performance of a workplace duty in an improper manner, including events which jeopardize the health and safety of persons, unresolved pattern of performance, issues related to truth or dishonesty, including failure to report a criminal conviction.

((("OAH" means the office of administrative hearings.))

"Prospective ((individual provider)) IP" means someone who has met the initial requirements for employment under chapter 74.39A RCW, is placed on the referral registry, and is seeking employment but has not been matched with a consumer(((employer))).

((("Provider" means an individual provider.))

"Referral registry" is a data base that is designed to assist consumers with finding individual providers and to assist individual providers to find employment.

"Respite provider" means an individual provider who is employed on a prearranged short term basis to fill in for a ~~routine caregiver~~.

"Routine provider" means an individual provider who is employed on a regularly scheduled basis.)

AMENDATORY SECTION (Amending WSR 11-13-009, filed 6/3/11, effective 7/4/11)

WAC 388-71-06060 What is the purpose of the referral registry? ((To increase consumer/employer choice while providing assistance in finding individual providers and prospective individual providers. In addition, the referral registry)) The purpose of the referral registry is to help consumers find individual providers of in-home respite and personal care by providing a list of providers who have been pre-screened. The referral registry:

(1) Takes into account the ((consumer/employer)) consumer's needs and preferences when identifying potential individual providers;

(2) ((Provides for reasonable standards of accountability for providers and prospective individual providers listed on the registry;

(3)) Is voluntary for ((individual)) providers and ((prospective individual providers and consumers/employers)) consumers;

((4)) (3) Promotes job opportunities for ((individual)) providers ((and prospective individual providers));

((5)) (4) Provides access to the data base for ((consumer/employers)) consumers who want to ((query)) search for a ((referral independently)) provider; and

((6)) (5) Increases a ((consumer/employer's)) consumer's choice ((of individual providers and prospective individual providers via)) through an established pool of available ((individual providers and prospective individual)) providers on the registry.

AMENDATORY SECTION (Amending WSR 11-13-009, filed 6/3/11, effective 7/4/11)

WAC 388-71-06080 Who is eligible to request a ((referral)) list of providers from the referral registry?

The following ((categories of)) persons are eligible to request a ((referral)) list of providers from the referral registry:

(1) ((Consumer/employers)) Consumers, who are adults ((or children)) with functional or developmental disabilities who qualify for and use or will use personal care or respite care paid for ((through)) with medicaid or state-only funds.

(2) Persons who are responsible for children with functional or developmental disabilities who qualify for and use or will use personal care or respite care paid for with medicaid or state-only funds.

(3) Persons who are authorized to request a ((referral)) list of providers on behalf of a consumer, including family members, area agency on aging or department case ((managers, department social workers and/or)) management staff, and ((-a)) consumer ((representative)) representatives.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

NEW SECTION

WAC 388-71-06125 Who hires an IP or prospective IP? The consumer or consumer's designated representative is responsible for interviewing, screening, hiring, supervising, and terminating an IP or prospective IP as required under WAC 388-71-0505 or 388-825-315.

NEW SECTION

WAC 388-71-06145 What requirements must an applicant satisfy to be placed on the referral registry as a provider? The applicant must satisfy the following requirements to be placed on the referral registry as a provider:

- (1) Be eighteen years of age or older;
- (2) Provide:
 - (a) A social security card;
 - (b) A current driver's license issued by the state of Washington or another state in which the applicant resides or has recently resided; or
 - (c) A current identification card, which includes the applicant's photograph, issued by the state of Washington or another state in which the applicant resides or has recently resided;
- (3) Complete an application and pre-screening with the registry coordinator;
- (4) Satisfactorily complete a Washington state patrol name and date of birth background screening as required by WAC 388-71-0510 and 388-825-320;
- (5) Meet the requirements to be paid for services as an individual provider under WAC 388-71-0540;
- (6) Complete "Becoming a Professional IP" workbook unless the applicant has already worked as an individual provider for more than three months;
- (7) Complete orientation and safety training as required by WAC 388-71-0860;
- (8) Have a current provider contract(s) with DSHS or initiate the process for obtaining a provider contract(s); and
- (9) Satisfactorily complete a national fingerprint-based background screening if the applicant has lived in the state of Washington for less than three years.

Applicants who do not meet the provider requirements under this section will not be placed on the referral registry.

NEW SECTION

WAC 388-71-06150 What requirements does an IP or prospective IP have to meet in order to continue to be listed on the referral registry? In order to continue to be listed on the referral registry, an IP or prospective IP must:

- (1) Respond promptly when he or she is contacted by the registry coordinator;
- (2) Satisfactorily complete the background screening process every two years or as required by the department;
- (3) After being matched with a consumer:
 - (a) Satisfactorily complete a national fingerprint-based background screening, as required by RCW 74.39A.056, unless determined exempt or fingerprints are already on file with the department;
 - (b) Complete required training under WAC 388-71-0523 or 388-825-355; and

(c) Meet certification requirements, unless exempt, under WAC 388-71-0523 or 388-825-355.

(4) The department may require an IP or prospective IP to have a Washington state name and date of birth background screening or a Washington state and national finger-print-based background screening, or both, at any time.

Failure to comply with any of the requirements under this section may result in removal from the referral registry.

NEW SECTION

WAC 388-71-06155 When will an IP or prospective IP be removed from the referral registry? An IP or prospective IP will be removed from the referral registry when he or she:

(1) Fails to meet the ongoing requirements set forth in WAC 388-71-06150;

(2) In the performance of his or her duties as an IP, has committed any unlawful act or provided care in an improper manner, including but not limited to:

(a) An act that jeopardized the health and safety of any persons; or

(b) Has demonstrated a pattern of poor performance.

(3) Requests that his or her name be removed from the referral registry;

(4) Has had his or her individual provider contract terminated under WAC 388-71-0551;

(5) Is denied payment for services as an individual provider by the department under WAC 388-71-0540, 388-71-0543, or 388-825-375

An IP or prospective IP may be removed from the referral registry if the department determines that he or she lacks the character, competence or suitability necessary to protect the health, safety or well-being of department consumers.

NEW SECTION

WAC 388-71-06165 Can the removal of an IP or prospective IP from the referral registry be contested? An IP, prospective IP, or the consumer to whom the individual provider is providing services may request a fair hearing to contest removal from the referral registry by using the procedures described in this section.

(1) All fair hearing requests to contest removal from the referral registry must be in writing and mailed, delivered, or faxed to the office of administrative hearings (OAH). OAH must receive the written request within 28 calendar days of the date the department's notice is mailed to or personally served upon the IP or the prospective IP, whichever occurs first.

(2) The IP, prospective IP, or consumer should keep a copy of his or her request for a fair hearing.

(3) The appeal process will be governed by chapter 34.05 RCW, chapter 388-02 WAC, and this chapter. If there is a conflict between chapter 388-02 WAC and this chapter, this chapter will govern.

A consumer's right to appeal the department's denial, termination, or suspension of an individual provider's contact is described in WAC 388-71-0560.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-71-06100 What is the difference between an individual provider and a prospective individual provider?

WAC 388-71-06120 What qualifies an individual provider or prospective individual provider to be listed on the referral registry?

WAC 388-71-06130 When will an individual provider or prospective individual provider be denied placement on the referral registry?

WAC 388-71-06135 When may an individual provider or prospective individual provider be denied placement on the referral registry?

WAC 388-71-06140 How does an individual provider or prospective individual provider apply to be placed on the referral registry?

WAC 388-71-06160 Does an individual provider or prospective individual provider have any ongoing responsibilities in order to continue to be listed on the referral registry?

WAC 388-71-06180 Are there training requirements for being placed on the referral registry?

WAC 388-71-06200 When will an individual provider or prospective individual provider be removed from the referral registry?

WAC 388-71-06220 What is the procedure for removing an individual provider or prospective individual provider from the referral registry?

WAC 388-71-06240 By what procedures will the department deny an individual provider or prospective individual provider's application to be placed on the referral registry?

WAC 388-71-06260 Who must be notified if a complaint is received about an individual provider?

WAC 388-71-06280 Are referral registry staff considered mandatory reporters?

WAC 388-71-06300 What is reasonable cause for mandatory reporting?

WAC 388-71-06340 How does a consumer/employer apply to use the referral registry services?

WAC 388-71-06360 How does a consumer/employer obtain a list of names from the referral registry?

WAC 388-71-06380 Who hires an individual provider or prospective individual provider?

WAC 388-71-06400 Does a consumer/employer who is eligible to have his or her individual provider paid through medicaid or state-only funds from DSHS need to gain approval from his/her case manager, social worker or nurse?

WAC 388-71-06420 How can a consumer/employer use the referral registry to get an individual provider in an emergency or as a critical personal care back-up?

Statutory Authority for Adoption: RCW 84.33.096, 82.32.300, and 82.01.060(2).

Statute Being Implemented: RCW 34.05.482 through 34.05.494.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Mark E. Bohe, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1574; Implementation and Enforcement: Stuart Thronson, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1300.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The revised rule, as proposed, does not impose performance requirements or administrative burdens on any small business not required by statute or the state and/or federal constitution.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule is not a significant legislative rule as defined by RCW 34.05.328.

March 4, 2014

Dylan Waits

Rules Coordinator

WSR 14-06-089
PROPOSED RULES
DEPARTMENT OF REVENUE

[Filed March 4, 2014, 9:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-02-107.

Title of Rule and Other Identifying Information: WAC 458-20-10004 Brief adjudicative proceedings for matters related to assessments and warrants for unpaid fees issued under chapter 59.30 RCW for manufactured and mobile home communities.

Hearing Location(s): Capital Plaza Building, Fourth Floor Executive Conference Room, 1025 Union Avenue S.E., Olympia, WA 98501, on April 10, 2014, at 10:00 a.m. Copies of draft rules are available for viewing and printing on our web site at Rules Agenda. Call-in option can be provided upon request no later than three days before the hearing date.

Date of Intended Adoption: April 17, 2014.

Submit Written Comments to: Mark E. Bohe, P.O. Box 47453, Olympia, WA 98504-7453, e-mail markbohe@dor.wa.gov, fax (360) 534-1606, by 5:00 p.m. on April 10, 2014.

Assistance for Persons with Disabilities: Contact Mary Carol LaPalm, (360) 725-7499, or Renee Cosare, (360) 725-7514, no later than ten days before the hearing date. For hearing impaired please contact us via the Washington relay operator at (800) 833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This new rule will provide brief adjudicative proceedings to those impacted by agency actions of the department of revenue in the administration of chapter 59.30 RCW. These brief adjudicative proceedings are authorized by RCW 34.05.482 through 34.05.-494.

Reasons Supporting Proposal: To explain the process by which a taxpayer may seek administrative review of agency actions of the department of revenue in the administration of chapter 59.30 RCW regarding the assessment of the one-time business license fee; assessment of the annual renewal application fee; assessment of the annual registration assessment fee; and assessment of the delinquency fee for manufactured and mobile home communities.

NEW SECTION

WAC 458-20-10004 Brief adjudicative proceedings for matters related to assessments and warrants for unpaid fees issued under chapter 59.30 RCW for manufactured and mobile home communities. (1) Introduction. The department of revenue (department) conducts adjudicative proceedings pursuant to chapter 34.05 RCW, the Administrative Procedure Act (APA). The department adopts in this section, the procedures as provided in RCW 34.05.482 through 34.05.494 for the administration of brief adjudicative proceedings to review the department's actions described in subsection (2) of this section.

This section explains the procedure pertaining to the adopted brief adjudicative proceedings.

(2) Department's action. The following actions taken by the department are subject to the brief adjudicative proceeding process described in this section:

(a) Assessment of the one-time business license application fee or annual renewal application fee in RCW 59.30.050 (3)(a);

(b) Assessment of the annual registration assessment fee in RCW 59.30.050 (3)(b); and

(c) Assessment of the delinquency fee in RCW 59.30.-050(4).

The assessment of more than one type of fee against a manufactured/mobile home community owner or landlord in RCW 59.30.050 does not result in the creation of more than one adjudicative proceeding if those fees are issued in the same document, on the same date.

As explained in RCW 59.30.020(4), the terms "landlord" and "community owner" both refer to the owner of the mobile home park or manufactured home community or their agents. For purposes of this rule, the department refers to such persons as "community owners."

(3) Conduct of brief adjudicative proceedings. To initiate an appeal of the department's action, the community owner has twenty-one calendar days from the date on the department's action to request a review of that action. The community owner must file a written notice of appeal explaining why the community owner disagrees with the action.

A form notice of appeal is available at <http://dor.wa.gov> or by calling 1-800-647-7706. The completed form should be mailed or faxed to the department at:

Department of Revenue
 Special Programs
 Review of Annual Registration for Manufactured/
 Mobile Home Communities
 P.O. Box 47472
 Olympia, WA 98504-7472
 Fax: 360-534-1320

(a) A presiding officer, who will be a person designated by the director of the department (director) or the assistant director of special programs division, will conduct brief adjudicative proceedings. The presiding officer for brief adjudicative proceedings will have agency expertise in the subject matter but will not otherwise have participated in the specific matter. The presiding officer's review is limited to the written record.

(b) As part of the notice of appeal, the community owner or the community owner's representative may include written documentation explaining the community owner's view of the matter. The presiding officer may also request additional documentation from the community owner or the department and will designate the date by which the documents must be submitted.

(c) In addition to the record, the presiding officer for brief adjudicative proceedings may employ agency expertise as a basis for decision.

(d) Within twenty-one calendar days of receipt of the community owner's notice of appeal, the presiding officer will enter an initial order including a brief explanation of the decision under RCW 34.05.485. All orders in these brief adjudicative proceedings will be in writing. The initial order will become the department's final order unless a petition for review is made to the department's appeals division under subsection (4) of this section. If the presiding officer's order invalidates the department action, the department may in its discretion initiate another action that corrects the defects in the prior action.

(4) Review of initial order from brief adjudicative proceeding. A community owner that has received an initial order upholding a department action under subsection (3) of this section may request a review by the department by filing a written petition for review or by making an oral request for review with the department's appeals division within twenty-one calendar days after the service of the initial order on the community owner as described in subsection (8) of this section.

A form petition of review is available at <http://dor.wa.gov>. A request for review should state the reasons for the review.

The address, telephone number, and fax number of the appeals division are:

Appeals Division
 Manufactured/Mobile Home Community Appeals
 Department of Revenue
 P.O. Box 47460
 Olympia, WA 98504-7460
 Telephone Number: 360-534-1335
 Fax: 360-534-1340

(a) A reviewing officer, who will be either the assistant director of the appeals division or such other person as designated by the director, will conduct a brief adjudicative proceeding and determine whether the initial order was correctly decided. The reviewing officer's review is limited to the written record.

(b) The agency record need not constitute the exclusive basis for the reviewing officer's decision. The reviewing officer will have the authority of a presiding officer.

(c) The order of the reviewing officer will be in writing and include a brief statement of the reasons for the decision, and it must be entered within thirty calendar days of the petition for review. The order will include a notice that judicial review may be available. The order of the reviewing officer represents a final order of the department. If a final order invalidates the department's action, the department may in its discretion initiate another action that corrects the defects in the prior action.

(d) A request for review is deemed denied if the department does not issue an order on review within thirty calendar days after the petition for review is filed.

(5) Record in brief adjudicative proceedings. The record with respect to the brief adjudicative proceedings under RCW 34.05.482 through 34.05.494 will consist of:

(a) The record before the presiding officer: The record before the presiding officer consists of the notice of the department action; the community owner's appeal of the department action; all records relied upon by the department or submitted by the community owner related to the department's action; and all correspondence between the community owner and the department regarding the department's action.

(b) The record before the reviewing officer: The record before the reviewing officer consists of all documents included in the record before the presiding officer; the community owner's petition for review; and all correspondence between the community owner and the department regarding the community owner's petition for review.

(6) Court appeal. Court appeal from the final order of the department is available pursuant to Part V, chapter 34.05 RCW. However, court appeal may be available only if a review of the initial decision has been requested under subsection (4) of this section and all other administrative remedies have been exhausted. See RCW 34.05.534.

(7) Computation of time. In computing any period of time prescribed by this section or by the presiding officer or reviewing officer, the day of the act or event after which the designated period is to run is not to be included. The last day of the period is to be included, unless it is a Saturday, Sunday,

or a legal holiday, in which event the period runs until the next day which is not a Saturday, Sunday, or legal holiday.

(8) Service. All notices and other pleadings or papers filed with the presiding or reviewing officer must be served on the community owner, their representatives/agents of record, and the department.

(a) Service is made by one of the following methods:

- (i) In person;
- (ii) By first-class, registered or certified mail;
- (iii) By fax and same-day mailing of copies;
- (iv) By commercial parcel delivery company; or
- (v) By electronic delivery pursuant to RCW 82.32.135.

(b) Service by mail is regarded as completed upon deposit in the United States mail properly stamped and addressed.

(c) Service by electronic fax is regarded as completed upon the production by the fax machine of confirmation of transmission.

(d) Service by commercial parcel delivery is regarded as completed upon delivery to the parcel delivery company, properly addressed with charges prepaid.

(e) Service by electronic delivery is regarded as completed on the date that the department electronically sends the information to the parties or electronically notifies the parties that the information is available to be accessed by them.

(f) Service to a community owner, their representative/agent of record, the department, and presiding officer must be to the address shown on the form notice of appeal described in subsection (3) of this section.

(g) Service to the reviewing officer must be to the appeals division at the address shown in subsection (4) of this section.

(h) Where proof of service is required, the proofs of service must include:

- (i) An acknowledgment of service;
- (ii) A certificate, signed by the person who served the document(s), stating the date of service; that the person did serve the document(s) upon all or one or more of the parties of record in the proceeding by delivering a copy in person to (names); and that the service was accomplished by a method of service as provided in this subsection.

(9) Continuance. The presiding officer or reviewing officer may grant, in their sole discretion, a request for a continuance by motion of the community owner, the department, or on its own motion.

(10) Conversion of a brief adjudicative proceeding to a formal proceeding. The presiding officer or reviewing officer, in their sole discretion, may convert a brief adjudicative proceeding to a formal proceeding at any time on motion of the community owner, the department, or the presiding/reviewing officer's own motion.

(a) The presiding/reviewing officer will convert the proceeding when it is found that the use of the brief adjudicative proceeding violates any provision of law, when the protection of the public interest requires the agency to give notice to and an opportunity to participate to persons other than the parties, and when the issues and interests involved warrant the use of the procedures of RCW 34.05.413 through 34.05.479.

(b) When a proceeding is converted from a brief adjudication to a formal proceeding, the director may become the

presiding officer or may designate a replacement presiding officer to conduct the formal proceedings upon notice to the community owner and the department.

(c) In the conduct of the formal proceedings, WAC 458-20-10002 will apply to the proceedings.

WSR 14-06-097
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed March 4, 2014, 5:35 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-20-033.

Title of Rule and Other Identifying Information: Electrical rules, chapter 296-46B WAC, Electrical safety standards, administration, and installation.

Hearing Location(s): Department of Labor and Industries (L&I), 7273 Linderson Way S.W., Room S119, Tumwater, WA 98501 (for directions to the L&I Office <http://www.lni.wa.gov/Main/ContactInfo/OfficeLocations/>), on April 10, 2014, at 1:00 p.m.

Date of Intended Adoption: May 20, 2014.

Submit Written Comments to: Alicia Curry, P.O. Box 44400, Olympia, WA 98504-4400, e-mail alicia.curry@lni.wa.gov, fax (360) 902-5292, by 5:00 p.m. on April 10, 2014.

Assistance for Persons with Disabilities: Contact Alicia Curry, rules coordinator, by March 25, 2014, at (360) 902-6244 or by e-mail alicia.curry@lni.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing amendments to new safety code requirements from the 2014 edition of the National Electrical Code (NEC) and to existing electrical rules. The 2014 NEC was adopted in reference by the department on March 1, 2013, and will replace the current 2008 NEC standards, effective July 1, 2014. The electrical rules are systematically reviewed each code cycle for consistency with national electrical safety standards and industry practice, for rule clarity, housekeeping changes, etc. The proposed amendments are needed to:

- Amend the 2014 NEC safety requirements to align with existing rules and eliminate rule conflicts;
- Adopt exceptions to the national electrical safety standards to ensure public, worker, and structure safety;
- Adopt proposals requested by stakeholders, such as:
 - o Allowing riser conduit installations to be installed at the time of the foundation without inspection, as opposed to inspection, prior to the foundation being poured; and
 - o Eliminate exceptions for receptacle installations in certain areas, such as garages, balconies, decks, etc. that are not readily accessible to discourage the use of extension cords and improve public safety; and
 - o Align the electrical rules with the 2014 NEC requirements for residential arc fault protection.

- Amend language for general housekeeping, grammatical and reference corrections to bring the rules up to date.

Reasons Supporting Proposal: The NEC sets the standard for safe electrical installation and inspection in homes, businesses, industry and institutions to protect people and property from electrical hazards. These rules are necessary to ensure the new code requirements that impact electrical work align with existing rules and amendments are proposed, before the NEC is implemented.

For more information on this rule making, visit the L&I web site at <http://www.lni.wa.gov/TradesLicensing/Electrical/LawRulePol/RuleDev/default.asp> or contact the individual below. Interested parties can sign up for e-mail updates at <http://www.lni.wa.gov/Main/Listservs/Electrical.asp>.

Statutory Authority for Adoption: Chapter 19.28 RCW, Electricians and electrical installations.

Statute Being Implemented: Chapter 19.28 RCW, Electricians and electrical installations.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: José Rodriguez, Tumwater, Washington, (360) 902-6348.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

EXECUTIVE SUMMARY: The electrical program within L&I reviews the NEC every three years or each code cycle to ensure the electrical rules align with the national safety standards and industry practice. In this rule making, the program is considering amendments to the electrical rules based upon adoption of the 2014 edition of the NEC, which will take effect July 1, 2014. The rule making is also intended to clarify the current rules and to address recommendations from stakeholders. As such, there are very few changes in this rule making that represent increased or new requirements that will impose new costs on the affected parties.

According to the Regulatory Fairness Act (RFA), RCW 19.85.030, an agency shall prepare a small business economic impact statement (SBEIS): (i) If the proposed rule will impose more than minor costs on businesses in an industry; or (ii) if requested to do so by a majority vote of the joint administrative rules review committee within forty-five days of receiving the notice of proposed rule making under RCW 34.05.320. This report is prepared to determine whether the proposed electrical rules will impose more than minor costs and, if yes, whether the proposal will impose a disproportionate impact on small businesses.

Section 2 contains the results with regard to the comparison of costs between small businesses and their larger counterpart. Based on these analyses, the department concludes the proposed rules will not impose a disproportionate impact on small businesses. In addition, the proposal as a whole will impose less than minor costs¹ on the affected businesses.

Therefore, an SBEIS is not required and this document is prepared for general information purposes only.

1: BACKGROUND AND INTRODUCTION.

1.1 The background of the electrical safety issue:

Electricity is essential to modern living as it is used everywhere, by almost all people across the world, each and every day. However, electricity is also widely recognized as a serious workplace hazard with the capability of exposing workers to electrical shock, burns, fires, and explosions. According to the Bureau of Labor Statistics (BLS), an average of one hundred ninety-one workers were killed each year from contact with electric current, between 2007 and 2009. During the same three year span, an estimated average of two thousand five hundred fifty nonfatal electrical events occurred involving days away from work in private industry. Electricity is also a major public safety issue as it is the cause of many non-work related incidents. The United States Consumer Product Safety Commission (CPSC) reported there was an estimated average of seventy nonwork-related electrocution fatalities associated with the use of consumer products between 2007 and 2009. In addition, electrical failure or malfunction was a factor in an estimated forty-three thousand seven hundred home fires in 2011 alone, leading to four hundred thirty deaths, one thousand six hundred twenty injuries, and \$1.5 billion in property damage across the United States.²

The NEC sets the standard for safe electrical installations and inspections in homes, businesses, industries and institutions to protect people and property from electrical hazards. It provides up-to-date electrical safety requirements that govern electrical work and has been widely recognized as the national consensus standard for the electrical industry since 1911. Like many other states, the Washington law (chapter 19.28 RCW) directs L&I to review the electrical rules on a regular basis to ensure they are consistent with the most recent national standards. To this end, the department makes necessary amendments to the existing electrical regulations following the adoption of each new edition of NEC standards which occurs every three years. The only exception was the NEC 2011 edition which did not initiate an agency rule making on the electrical regulations due to the Governor's Executive Orders 10-06 and 11-03 to suspend noncritical rule makings.

1.2 The description of this rule making: L&I has statutory authority to adopt reasonable rules in furtherance of safety to life and property. Specifically, the electrical program within the department reviews the NEC every three years or each code cycle to ensure the rules align with the new code requirements and to propose necessary changes, prior to the publication of the NEC. The 2014 edition of the NEC was issued by the National Fire Protection Association (NFPA) on August 1, 2013, and took effect on August 21, 2013. To date, fifteen states, including Washington, have started the process to update their administrative rules through which the NEC is adopted to reference the newest edition.

This rule making proposes changes to chapter 296-46B WAC as a result of the adoption of the 2014 NEC and other recommendations from stakeholders. The department filed a CR-101 on September 24, 2013, which conveyed the intent to explore changes to the existing electrical rules. From October

1 through October 31, 2013, the department solicited external stakeholders' proposals for additions or revisions to the rules. On December 19, 2013, the technical advisory committee (TAC) comprised of industry stakeholders and department staff met to review all proposals and provide advice to the department. During the electrical board regular meeting on January 30, 2014, the board considered the results of the TAC meeting and made its own recommendations on the proposal. The final draft of the proposed rules was made available soon thereafter and a public hearing will be held on April 10, 2014.

While the vast majority of the amendments are proposed to reflect the updates made in the 2014 NEC standards, the program does not adopt the NEC code into the electrical rules in its entirety. Exceptions and differences may result from stakeholders' proposals resulting in rules that are more or less restrictive than the NEC standards and also stakeholders' proposals for alternative methods to a requirement that may not be addressed in the NEC. When these proposals are adopted by the department based upon recommendations from the TAC and the board, differences develop between the department's electrical rules and those of the NEC. Also, there are some NEC changes that may have unintended consequences and must be addressed in the proposed rules. In summary, the following changes are the ones not in the NEC or other relevant national consensus standards but proposed by the department:

- WAC 296-46B-210 (008)(A) Dwelling units GFCI requirements: (2) All fixed electrical equipment with exposed grounded metal parts within an enclosed shower area or within five feet of the top inside edge of a bathtub must have ground fault circuit interrupter (GFCI) protection.
- WAC 296-46B-705 Interconnected electric power production sources: For utility interactive systems, any person making interconnections between a power production source and the utility distribution network must consult the serving utility and is required to meet all additional utility standards.
- WAC 296-46B-900 (1)(c) Electrical plan review: (iv) "Enhanced service facility" (ESF) means a facility, or a portion of a facility, that provides treatment and services to persons for whom acute inpatient treatment is not medically necessary and who have been determined by the department to be inappropriate for placement in other licensed facilities due to the complex needs that result in behavioral and security issues. For the purposes of this chapter, an enhanced services facility is not an evaluation and treatment facility certified under chapter 71.05 RCW.
- WAC 296-46B-900 Electrical plan review for educational, institutional or health care facilities/buildings: (3)(a)(vi) For installations outlined in (ii), (iii), and (v) above to be considered, the following must be available to the electrical inspector before the work is initiated:

(A) A clear and adequate description of the project's scope;

(B) A load calculation(s);

(C) What the load changes are, providing both before and after panel schedules as needed; and

(D) Provide information showing that the service and feeder(s) supplying the panel(s) where the work is taking place has adequate capacity for any increased load and has code compliant overcurrent protection for that supply.

- WAC 296-46B-935 Administrator certificate. General. (1) The department will deny application, renewal, change of assignment, or reinstatement of an administrator or master electrician certificate if an individual owes money as a result of an outstanding final judgment(s) to the department.

2. ASSESSING ECONOMIC IMPACT BY EMPLOYMENT SIZE: The Regulatory Fairness Act, RCW 19.85.040(1) requires the department to determine whether a proposed rule will have a disproportionate cost impact on small businesses if an SBEIS is needed. The act directs the department to compare "the cost of compliance for small businesses with the cost of compliance for the ten percent of businesses that are the largest businesses."

This SBEIS report compares the average cost per affected worker between small and larger businesses for each new or increased requirement beyond the baseline standards. The purpose here is to best estimate the extent to which the disproportionate impact, if any, is on small businesses rather than to estimate the total costs to the affected businesses as a whole.

2.1. Comparison of costs associated with GFCI protection in a bathroom: Under the proposed rules, all fixed electrical equipment with exposed grounded metal parts within an enclosed shower area or within five feet of the top inside edge of a bathtub must have GFCI protection. This requirement is not in the NEC but it has gained unanimous support from the TAC. It was proposed by the department to address the safety issue concerning the trend towards installing fireplaces and wall mounted TVs in the bathtub areas. GFCIs are electrical safety devices that trip electrical circuits when they detect ground faults or leakage currents and can effectively prevent residential electrocutions. In regard to the costs of this requirement, the wiring of such equipment is necessary whether GFCI protections are required or not. The additional cost is due to the price difference between a GFCI device and a non-GFCI device. A review of selling prices among local and online hardware stores shows the cost differential for choosing a GFCI receptacle or breaker over a non-GFCI device ranges from \$20 to \$50. Roughly, each installation will cost \$35 extra.

Because this cost will be reflected in the final housing costs and passed on to home buyers, individual consumers rather than the companies that install the equipment will bear this cost. Therefore, the department does not believe there is any disproportionate cost impact on small businesses in compliance with this requirement.

2.2. Comparison of costs associated with electrical plan review: Under the proposed rules, for certain projects involving educational, institutional or health care facilities to be exempt from formal electrical plan review, the contractor must provide evidence of the conditions on which the exemption is met. The department has always had the ability to ask

for such information on a case-by-case basis, and many contractors are already in compliance by having the required information available. What the rule modification does is clarify what information will be required so that customers can be better prepared. This may save time and benefit both customers and the department by avoiding a lot of back and forth correspondence.

That being said, there will be increased administrative burden for contractors who are not already in compliance with this requirement. However, the added cost is expected to be minor for an individual project as we estimate that normally it will only take an electrical engineer about two hours to prepare the required information in a written document. In addition, this cost can always be passed on to the consumers. Therefore, the department does not believe there is any disproportionate cost impact on small businesses in compliance with this requirement.

2.3. Comparison of costs associated with the eligibility of an electrical administrator to be assigned: Under this section, an administrator or a master electrician who owes a final judgment to the department cannot be assigned by electrical contractors. This change was proposed by the department and has unanimous support from the TAC. With respect to the cost impact, this amendment will not impose any new costs on a vast majority of current or new administrators or electricians. There are two reasons for this determination. First, a very small number of current administrators with valid certificates owe money to the department as a result of outstanding final judgments. Second, under the existing rules, the department will deny an application or renewal of a certificate if an individual owes money to the department. Without a valid certificate or a successful renewal of a certificate, an individual automatically becomes ineligible for being assigned to any electrical contractors. Therefore, the only individuals expected to be affected by this rule amendment are those who owe money to the department and attempt to be assigned to a contractor.

However, these costs are borne by workers, not the employers that hire them. Therefore, the proposed change is not expected to have any disproportionate cost impact on small businesses.

2.4. Comparison of costs associated with interconnected electric power production sources: Under this proposed amendment, any person making interconnections between a power production source and the utility distribution network for a utility interactive system must consult the serving utility and is required to meet all additional utility standards. This is a new section to the electrical rules, but it does not represent new requirements. It simply combines the same standard for generators under Section 445 and solar photovoltaic systems under Section 690 of the current rules into a new section, and clarifies that any utility interactive system must comply with the requirement. Therefore, there is no new cost associated with this rule amendment.

3. ACTIONS TAKEN TO REDUCE THE IMPACT OF THE PROPOSED RULES ON SMALL BUSINESS: The above analysis indicates that it is not likely that small businesses will bear a disproportionate share of regulatory burden from the proposed rule changes. Therefore, L&I is not required to take any actions to mitigate the costs for small businesses.

4. SMALL BUSINESS INVOLVEMENT IN THE RULE-MAKING PROCESS: The department has made substantial efforts to involve small businesses and their representatives at various points in the rule-making process. These efforts include:

(1) During a thirty-one day stakeholder proposal period from October 1, 2013, through October 31, 2013, the department received and considered numerous proposals for additions or revisions to the rules from stakeholders, many of which are small businesses, or the representatives of small businesses.

(2) The department established a general TAC consisting of thirty-two appointed industry experts and interested groups, including small business representatives, to review and make suggestions on proposals from stakeholders. Then a TAC meeting was held in the Tukwila office in December 2013. The TAC reviewed and identified proposals that may have an economic impact on other specialties and small businesses.

(3) During its quarterly meeting in January 2014, the electrical board, which was created by law, reviewed the draft and made its recommendations on the proposed rules. This board consists of a number of business and trade representatives and associations. Some of these members represent small businesses, and their engagement in this rule-making activity reflects the involvement of small businesses.

(4) The department will also hold a public hearing for these proposed provisions at the beginning of April this year. During the hearing, the stakeholders, including many small businesses, will have another opportunity to provide their feedback on the proposal.

5. INDUSTRIES LIKELY TO BE REQUIRED TO COMPLY WITH THE RULE: These proposed rule changes will mainly affect electrical contractors and other companies that hire electrical workers, as well as owners of various facilities where these electrical regulations apply. Other involved businesses may possibly be affected.

6. NUMBER OF JOBS CREATED OR LOST: The department does not anticipate that a significant number of jobs would be created or lost as a result of compliance with these proposed rule changes. The cost impact of these amendments on any single business is expected to be very minor. Therefore, they would not trigger any hiring or firing decisions for the regulated companies.

7. CONCLUSIONS: The department concludes that:

1. The proposed rule changes analyzed in this report will not impose any significant disproportionate impact on small businesses. The average cost of these amendments to a single business is insignificant.

2. The proposed rules will impose less than minor costs on average on all affected businesses. Therefore, an SBEIS is not required and this document is prepared for general information purposes only.

8. REFERENCES:

Hirschbold, M. F. and Stieva, G. (2010). *Automating emergency power supply system testing in hospitals*. White Paper, Schneider Electric.

Karels, T. R. (2003). *Memorandum on the economic considerations for GFCIs in new residential installations*. U.S. Consumer Product Safety Commission, Bethesda, MD.

Office of Fair and Safe Work Queensland (2002). *Review of the electrical safety regulation*. Department of Justice and Attorney-General, Queensland, Australia.

OSHA (2012). *Injury and illness prevention programs white paper*. U.S. Department of Labor, Washington, D.C.

OSHA (2007). *29 CFR Part 1910: Electrical standard final rule*. Federal Register, Volume 72(30), Washington, D.C.

¹ Minor cost is defined under RCW 19.85.020 as a cost per business that is less than three-tenths of one percent of annual revenue or income, or one hundred dollars, whichever is greater, or one percent of annual payroll. It is evident that the cost per business as a result of these rule amendments is much smaller than three-tenths of one percent of annual income or one percent of annual payroll of the affected businesses.

² Data Source: National Fire Protection Association (NFPA), January, 2013.

A copy of the statement may be obtained by contacting Alicia Curry, P.O. Box 44410, Olympia, WA 98504-4400, phone (360) 902-6244, fax (360) 902-5292, e-mail alicia.curry@Lni.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Alicia Curry, P.O. Box 44410, Olympia, WA 98504-4400, phone (360) 902-6244, fax (360) 902-5292, e-mail alicia.curry@Lni.wa.gov.

March 4, 2014

Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 13-03-128, filed 1/22/13, effective 3/1/13)

WAC 296-46B-010 General. Adopted standards.

(1) The ((2008)) 2014 edition of the National Electrical Code (NFPA 70 - ((2008)) 2014) including Annex A, B, and C; Commercial Building Telecommunications Cabling Standard (ANSI/TIA-568-C series, February 2009); Commercial Building Standard for Telecommunications Pathway and Spaces (TIA-569-B, October 2004); Commercial Building Grounding and Bonding Requirements for Telecommunications (ANSI-TIA-607-B, August 2011); Residential Telecommunications Cable Standard (ANSI/TIA/EIA 570-B-2004); and the National Electrical Safety Code (NESC C2-((2007)) 2012 excluding Appendixes A and B) are hereby adopted by reference as part of this chapter. ((On July 1, 2014, the 2014 edition of the National Electrical Code (NFPA 70-2014) including Annex A, B, and C is hereby adopted by reference as part of this chapter and replaces the 2008 edition.))

This chapter will be followed where there is any conflict between this chapter and the above adopted standards.

The National Electrical Code will be followed where there is any conflict between the National Electrical Code and, ANSI/TIA/EIA 568-C, ANSI/TIA/EIA 569-B, ANSI/TIA/EIA 607-B, ANSI/TIA/EIA 570-B, or the NESC C2.

Inspections - General.

(2) Electrical inspectors will give information as to the interpretation or application of the standards in this chapter, but will not lay out work or act as consultants for contractors, owners, or users.

(3) A variance from the electrical installation requirements of chapter 19.28 RCW or this chapter may be granted by the department or the city that has electrical inspection jurisdiction when it is assured that equivalent objectives can be achieved by establishing and maintaining effective safety.

(a) Any electrical permit holder may request a variance.

(b) The permit holder must make the request in writing, using a form provided by the department, to the chief electrical inspector or to the city that has electrical inspection jurisdiction. The request must include:

(i) A description of the installation as installed or proposed;

(ii) A detailed list of the applicable code violations;

(iii) A detailed list of safety violations;

(iv) A description of the proposal for meeting equivalent objectives for code and/or safety violations; and

(v) Appropriate variance application fee as listed in chapter 296-46B WAC, Part C.

(4) Electrical wiring or equipment subject to this chapter must be sufficiently accessible, at the time of inspection, to allow the inspector to visually inspect the installation to verify conformance with the NEC and any other electrical requirements of this chapter with the exception of not more than 2.44 m (8 ft) of electrical conduit in a foundation of a one- or two-family dwelling or residential outbuilding for use as service entrance raceway.

(5) All required equipment grounding conductors installed in concealed cable or flexible conduit systems must be completely installed and made up at the time of the rough-in cover inspection.

(6) The installation of all structural elements and mechanical systems (e.g., framing, plumbing, ducting, etc.) must be complete in the area(s) where electrical inspection is requested. Prior to completion of an exterior wall cover inspection, either:

(a) The exterior shear panel/sheathing nail inspection must be completed by the building code inspector; or

(b) All wiring and device boxes must be a minimum of 63 mm (2 1/2") from the exterior surface of the framing member; or

(c) All wiring and device boxes must be protected by a steel plate a minimum of 1.6 mm (1/16") thick and of appropriate width and height installed to cover the area of the wiring or box.

(7) In order to meet the minimum electrical safety standards for installations, all materials, devices, appliances, and equipment, not exempted in chapter 19.28 RCW, must conform to applicable electrical product standards recognized by the department, be listed, or field evaluated. For any equipment that requires an amusement operating permit under chapter 67.42 RCW, the operating permit is *prima facie* evidence of an appropriate standard. Other than as authorized by the chief electrical inspector or a city authorized to do electrical inspection, equipment must not be energized until such standards are met.

(8) The state department of transportation is recognized as the inspection authority for telecommunications systems installations within the rights of way of state highways provided the department of transportation maintains and enforces an equal, higher or better standard of construction,

and of materials, devices, appliances, and equipment than is required for telecommunications systems installations by chapter 19.28 RCW and this chapter.

Inspection move on buildings and structures.

(9) All buildings or structures relocated into or within the state:

(a) Other than residential, wired inside the United States (U.S.) must be inspected to ensure compliance with current requirements of chapter 19.28 RCW and the rules developed by the department.

(b) Wired outside the U.S. or Canada must be inspected to ensure compliance with all current requirements of chapter 19.28 RCW and the rules developed by the department.

(10) Residential buildings or structures wired in the U.S., to NEC requirements, and moved into or within a county, city, or town must be inspected to ensure compliance with the NEC requirements in effect at the time and place the original wiring was made. The building or structure must be inspected to ensure compliance with all current requirements of chapter 19.28 RCW and the rules developed by the department if:

(a) The original occupancy classification of the building or structure is changed as a result of the move; or

(b) The building or structure has been substantially remodeled or rehabilitated as a result of the move.

(11) Residential buildings or structures wired in Canada to Canadian Electrical Code (CEC) standards and moved into or within a county, city, or town, must be inspected to ensure compliance with the following minimum safety requirements:

(a) Service, service grounding, and service bonding must comply with the current chapter 19.28 RCW and rules adopted by the department.

(b) Canadian Standards Association (CSA) listed Type NMD cable is allowed with the following qualifications:

(i) CSA listed Type NMD cable, American Wire Gauge #10 and smaller installed after 1964 utilizing an equipment grounding conductor smaller than the phase conductors, must be:

(A) Replaced with a cable utilizing a full-size equipment grounding conductor; or

(B) Protected by a ground fault circuit interrupter protection device.

(ii) CSA listed Type NMD cable, #8 AWG and larger, must:

(A) Utilize an equipment grounding conductor sized according to the requirements of the NEC in effect at the time of the installation;

(B) Be protected by a ground fault circuit interrupter protection device; or

(C) Be replaced.

(c) Other types of wiring and cable must be:

(i) Replaced with wiring listed or field evaluated in accordance with U.S. standards by a laboratory approved by the department; or

(ii) Protected by a ground fault circuit interrupter protection device and arc fault circuit protection device.

(d) Equipment, other than wiring or panelboards, manufactured and installed prior to 1997 must be listed and identified by laboratory labels approved by the department or CSA labels.

(e) All panelboards must be listed and identified by testing laboratory labels approved by the department with the following qualifications:

(i) CSA listed panelboards labeled "suitable for use as service equipment" will be considered to be approved as "suitable for use only as service equipment."

(ii) CSA listed panelboards used as panelboards as described in the NEC, must meet all current requirements of the NEC and this chapter.

(f) Any wiring or panelboards replaced or changed as a result of the move must meet current requirements of chapter 19.28 RCW and this chapter.

(g) The location, type, and ground fault circuit interrupter protection of receptacles and equipment in a bathroom, kitchen, basement, garage, or outdoor area must meet the Washington requirements in effect at the time the wiring was installed.

(h) 4, 15-ampere, kitchen small appliance circuits will be accepted in lieu of 2, 20-ampere, kitchen small appliance circuits. Receptacles will not be required to be added on kitchen peninsular or island counters.

(i) Spacing requirements for all other receptacles must meet the Washington requirements in effect at the time the wiring was installed.

(j) Receptacles installed above baseboard or fixed wall space heaters must be removed and the outlet box covered with a blank cover. The receptacle is required to be relocated as closely as possible to the existing location.

(k) Lighting outlet and switch locations must meet the Washington requirements in effect at the time the wiring was installed.

(l) Dedicated 20-ampere small appliance circuits are not required in dining rooms.

(m) Electric water heater branch circuits must be adequate for the load.

(n) The location, type, and circuit protection of feeders must meet the Washington requirements in effect at the time the wiring was installed.

Wiring methods for designated building occupancies.

(12) Wiring methods in ~~((places of assembly located within))~~ educational or institutional facilities as defined ~~((or classified))~~ in this chapter must be ~~((wired in))~~ metallic or nonmetallic raceways, MI, MC, or AC cable. Places of assembly located within these facilities must comply with NEC 518.4(A).

(13) Assisted living facility generator systems may be wired and installed per NEC 517.

~~((13))~~ (14) Lawfully installed existing electrical installations that do not comply with the provisions of this chapter and remain in compliance with the code at the time of the installation, will be permitted to be continued without change (i.e., without circuitry or occupancy change). Additions, alterations, modifications, or repairs to the electrical system must conform to the current requirements of this chapter.

~~((14))~~ (15) Listed tamper-resistant receptacles are required in all licensed day care centers, all licensed children group care facilities, and psychiatric patient care facilities where accessible to children five years of age and under. Listed tamper-resistant receptacles are required in psychiatric patient care facilities where accessible to psychiatric patients

over five years of age and the public access areas in medical facilities.

Traffic management systems.

((15))) (16) The department or city authorized to do electrical inspections will perform the electrical inspection and acceptance of traffic management systems within its jurisdiction. A traffic management system includes:

- (a) Traffic illumination systems;
- (b) Traffic signal systems;
- (c) Traffic monitoring systems;

(d) The electrical service cabinet and all related components and equipment installed on the load side of the service cabinet supplying electrical power to the traffic management system; and

(e) Signalization system(s) necessary for the operation of a light rail system.

A traffic management system can provide signalization for controlling vehicular traffic, pedestrian traffic, or rolling stock.

((16))) (17) The department or city authorized to do electrical inspections recognizes that traffic signal conductors, pole and bracket cables, signal displays, traffic signal controllers/cabinets and associated components used in traffic management systems are acceptable for the purpose of meeting the requirements of chapter 19.28 RCW provided they conform with the following standards or are listed on the Washington state department of transportation (WSDOT) qualified products list.

- (a) WSDOT/APWA standard specifications and plans;
- (b) WSDOT *Design Manual*;
- (c) International Municipal Signal Association (IMSA);
- (d) National Electrical Manufacturer's Association (NEMA);
- (e) Federal Standards 170/Controller Cabinets;
- (f) Manual for *Uniform Road, Bridge, and Municipal Construction*;
- (g) Institute of Transportation Engineers (ITE); or
- (h) Manual of *Uniform Traffic Control Devices (MUTCD)*.

((17))) (18) Associated induction detection loop or similar circuits will be accepted by the department or city authorized to do electrical inspections without inspection.

((18))) (19) For the licensing requirements of chapter 19.28 RCW, jurisdictions will be considered owners of traffic management systems when doing electrical work for another jurisdiction(s) under a valid interlocal agreement, as permitted by chapter 39.34 RCW. Interlocal agreements for traffic management systems must be filed with the department or city authorized to do electrical inspections prior to work being performed for this provision to apply.

((19))) (20) Jurisdictions, with an established electrical inspection authority, and WSDOT may perform electrical inspection on their rights of way for each other by interlocal agreement. They may not perform electrical inspection on other rights of way except as allowed in chapter 19.28 or 39.34 RCW.

((20))) (21) Underground installations.

(a) In other than open trenching, raceways will be considered "fished" according to the NEC and do not require visual inspection.

(b) The department or city authorized to do electrical inspections will conduct inspections in open trenching within its jurisdiction. The electrical work permit purchaser must coordinate the electrical inspection. A written request (e.g., letter, e-mail, fax, etc.) for inspection, made to the department or city authorized to do electrical inspections office having the responsibility to perform the inspection, must be made a minimum of two working days prior to the day inspection is needed (e.g., two working days 10:00 a.m. Tuesday request for a 10:00 a.m. Thursday inspection, excluding holidays and weekends).

If, after proper written request, the department or city authorized to do electrical inspections fails to make an electrical inspection at the time requested, underground conduit may be covered after inspection by the local government jurisdiction's project inspector/designee. Written documentation of a local government jurisdiction inspection must be provided to the department or city authorized to do electrical inspections when requested. Written documentation will include:

- (i) Date and time of inspection;
- (ii) Location;
- (iii) Installing firm;
- (iv) Owner;
- (v) Type of conduit;
- (vi) Size of conduit;
- (vii) Depth of conduit; and
- (viii) Project inspector/designee name and contact information.

((21))) (22) Identification of traffic management system components. Local government jurisdictions or WSDOT may act as the certifying authority for the safety evaluation of all components.

(a) An electrical service cabinet must contain only listed components. The electrical service cabinet enclosure is not required to be listed but will conform to the standards in subsection ((22))) (23) of this section.

(b) The local government jurisdiction must identify, as acceptable, the controller cabinet or system component(s) with an identification plate. The identification plate must be located inside the cabinet and may be attached with adhesive.

((22))) (23) Conductors of different circuits in same cable, enclosure, or raceway. All traffic management system circuits will be permitted to occupy the same cable, enclosure, or raceway without regard to voltage characteristics, provided all conductors are insulated for the maximum voltage of any conductor in the cable, enclosure, or raceway.

AMENDATORY SECTION (Amending WSR 13-03-128, filed 1/22/13, effective 3/1/13)

WAC 296-46B-100 General definitions. All definitions listed in the National Electrical Code and chapter 19.28 RCW are recognized in this chapter unless other specific definitions are given in this chapter and chapter 19.28 RCW. The definitions in this section apply to all parts of this chapter. Some sections may have definitions specific to that section.

"Accreditation" is a determination by the department that a laboratory meets the requirements of this chapter and is

therefore authorized to evaluate electrical products that are for sale in the state of Washington.

"Administrative law judge" means an administrative law judge (ALJ) appointed pursuant to chapter 34.12 RCW and serving in board proceedings pursuant to chapter 19.28 RCW and this chapter.

"ANSI" means American National Standards Institute. Copies of ANSI standards are available from the National Conference of States on Building Codes and Standards, Inc.

"Appeal" is a request for review of a department action by the board as authorized by chapter 19.28 RCW.

"Appellant" means any person, firm, partnership, corporation, or other entity that has filed an appeal or request for board review.

"Appliance" means household appliance.

"ASTM" means the American Society for Testing and Materials. Copies of ASTM documents are available from ASTM International.

"AWG" means American Wire Gauge.

"Basement" means that portion of a building that is partly or completely below grade plane. A basement will be considered as a story above grade plane and not a basement where the finished surface of the floor above the basement is:

(a) More than 1829 mm (six feet) above grade plane;

(b) More than 1829 mm (six feet) above the finished ground level for more than 50% of the total building perimeter; or

(c) More than 3658 mm (twelve feet) above the finished ground level at any point. Also see "mezzanine" and "story."

"Board" means the electrical board established and authorized under chapter 19.28 RCW.

"Chapter" means chapter 296-46B WAC unless expressly used for separate reference.

"Category list" is a list of manufacturing safety standards or product types determined by the department.

A "certified electrical product" is an electrical product to which a laboratory, accredited by the state of Washington, has the laboratory's certification mark attached.

A "certification mark" is a specified laboratory label, symbol, or other identifying mark that indicates the manufacturer produced the product in compliance with appropriate standards or that the product has been tested for specific end uses.

"Certificate of competency" includes the certificates of competency for master ((journeyman)) journey level electrician, master specialty electrician, ((journeyman)) journey level, and specialty electrician.

A laboratory "certification program" is a specified set of testing, inspection, and quality assurance procedures, including appropriate implementing authority, regulating the evaluation of electrical products for certification marking by an electrical products certification laboratory.

A "complete application" includes the submission of all appropriate fees, documentation, and forms.

"Construction," for the purposes of chapter 19.28 RCW, means electrical construction.

"Coordination (selective)" as defined in NEC 100 must be determined and documented by a professional engineer registered under chapter 18.43 RCW.

"Department" means the department of labor and industries of the state of Washington.

"Director" means the director of the department, or the director's designee.

"Egress - Unobstructed (as applied to NEC 110.26 (C)(2) (a))" means an egress path that allows a worker to travel to the exit from any other area in the room containing the equipment described in NEC 110.26 (C)(2) without having to pass through that equipment's required working space.

"Electrical equipment" includes electrical conductors, conduit, raceway, apparatus, materials, components, and other electrical equipment not exempted by RCW 19.28.006 (9). Any conduit/raceway of a type listed for electrical use is considered to be electrical equipment even if no wiring is installed in the conduit/raceway at the time of the conduit/raceway installation.

An "electrical products certification laboratory" is a laboratory or firm accredited by the state of Washington to perform certification of electrical products.

An "electrical products evaluation laboratory" is a laboratory or firm accredited by the state of Washington to perform on-site field evaluation of electrical products for safety.

"Field evaluated" means an electrical product to which a field evaluation mark is attached. Field evaluation must include job site inspection unless waived by the department, and may include component sampling and/or laboratory testing.

"Field evaluation mark" is a specified laboratory label, symbol, or other identifying mark indicating the manufacturer produced the product in essential compliance with appropriate standards or that the product has been evaluated for specific end uses.

A "field evaluation program" is a specified set of testing, inspection, and quality assurance procedures, including appropriate implementing authority regulating the testing and evaluation of electrical products for field evaluation marking.

The "filing" is the date the document is actually received in the office of the chief electrical inspector.

"Final judgment" means any money that is owed to the department under this chapter, including fees and penalties, or any money that is owed to the department as a result of an individual's or contractor's unsuccessful appeal of a citation.

"Fished wiring" is when cable or conduit is installed within the finished surfaces of an existing building or building structure (e.g., wall, floor or ceiling cavity).

"Household appliance" means utilization equipment installed in a dwelling unit that is built in standardized sizes or types and is installed or connected as a unit to perform one or more functions such as cooking and other equipment installed in a kitchen, clothes drying, clothes washing, portable room air conditioning units and portable heaters, etc. Fixed electric space-heating equipment covered in NEC 424 (furnaces, baseboard and wall heaters, electric heat cable, etc.) and fixed air-conditioning/heat pump equipment (NEC 440) are not household appliances. Household appliance does not mean any utilization equipment that:

(a) Supplies electrical power, other than Class 2, to other utilization equipment; or

(b) Receives electrical power, other than Class 2, through other utilization equipment.

HVAC/refrigeration specific definitions:

(a) "HVAC/refrigeration" means heating, ventilation, air conditioning, and refrigeration.

(b) "HVAC/refrigeration component" means electrical power and limited energy components within the "HVAC/refrigeration system," including, but not limited to: Pumps, compressors, motors, heating coils, controls, switches, thermostats, humidistats, low-voltage damper controls, outdoor sensing controls, outside air dampers, stand-alone duct smoke detectors, air monitoring devices, zone control valves and equipment for monitoring of HVAC/refrigeration control panels and low-voltage connections. This definition excludes equipment and components of non-HVAC/refrigeration control systems."

(c) "HVAC/refrigeration control panel" means an enclosed, manufactured assembly of electrical components designed specifically for the control of a HVAC/refrigeration system. Line voltage equipment that has low voltage, NEC Class 2 control or monitoring components incidental to the designed purpose of the equipment is not an HVAC/refrigeration control panel (e.g., combination starters).

(d) "HVAC/refrigeration control system" means a network system regulating and/or monitoring a HVAC/refrigeration system. Equipment of a HVAC/refrigeration control system includes, but is not limited to: Control panels, data centers, relays, contactors, sensors, and cables related to the monitoring and control of a HVAC/refrigeration system(s).

(e) "HVAC/refrigeration equipment" means the central unit primary to the function of the "HVAC/refrigeration system." HVAC/refrigeration includes, but is not limited to: Heat pumps, swamp coolers, furnaces, compressor packages, and boilers.

(f) "HVAC/refrigeration system" means a system of HVAC/refrigeration: Wiring, equipment, and components integrated to generate, deliver, or control heated, cooled, filtered, refrigerated, or conditioned air. This definition excludes non-HVAC/refrigeration control systems (e.g., fire alarm systems, intercom systems, building energy management systems, and similar non-HVAC/refrigeration systems).

"IBC" means the International Building Code. Copies of the IBC are available from the International Code Council.

An "individual" or "party" or "person" means an individual, firm, partnership, corporation, association, government subdivision or unit thereof, or other entity.

An "installation" includes the act of installing, connecting, repairing, modifying, or otherwise performing work on an electrical system, component, equipment, or wire except as exempted by WAC 296-46B-925. An installation is not the passive testing or operational programming of an electrical system, component, equipment, or wire. See "passive testing."

An "identification plate" is suitable for the environment and is a printed or etched adhesive label approved by the department or a phenolic or metallic plate or other similar material engraved in block letters at least 1/4" (6 mm) high unless specifically required to be larger by this chapter, suitable for the environment and application. The letters and the background must be in contrasting colors. Screws, rivets, permanent adhesive, or methods specifically described in this

chapter must be used to affix an identification plate to the equipment or enclosure.

"Job site" means a specific worksite having a single address or specific physical location (e.g., a single family residence, a building, a structure, a marina, and individual apartment building with a specific address, etc.).

"Journey level electrician" means a person who has been issued a journey level electrician certificate of competency by the department. The terms "journey level" and "journey-person" in chapter 19.28 RCW are synonymous.

"License" means a license required under chapter 19.28 RCW.

"Labeled" means an electrical product that bears a certification mark issued by a laboratory accredited by the state of Washington.

A "laboratory" may be either an electrical product(s) certification laboratory or an electrical product(s) evaluation laboratory.

A "laboratory operations control manual" is a document to establish laboratory operation procedures and may include a laboratory quality control manual.

"Like-in-kind" means having the same overcurrent protection requirements and similar characteristics such as voltage requirement, current draw, short circuit characteristics, and function within the system and being in the same location. Like-in-kind also includes any equipment component authorized by the manufacturer as a suitable component replacement part.

For the purpose of WAC 296-46B-940, a "((lineman)) lineworker" is a person employed by a serving electrical utility or employed by a licensed general electrical contractor who carries, on their person, evidence that they:

(a) Have graduated from a department-approved ((lineman's)) lineworker's apprenticeship course; or

(b) Are currently registered in a department-approved ((lineman's)) lineworker's apprenticeship course and are working under the direct one hundred percent supervision of a ((journeyman)) journey level electrician or a graduate of a ((lineman's)) lineworker's apprenticeship course approved by the department. The training received in the ((lineman's)) lineworker's apprenticeship program must include training in applicable articles of the currently adopted National Electrical Code.

"Listed" means equipment has been listed and identified by a laboratory approved by the state of Washington for the appropriate equipment standard per this chapter.

"Low voltage" means:

(a) NEC, Class 1 power limited circuits at 30 volts maximum.

(b) NEC, Class 2 circuits powered by a Class 2 power supply as defined in NEC 725.121(A).

(c) NEC, Class 3 circuits powered by a Class 3 power supply as defined in NEC 725.121(A).

(d) Circuits of telecommunications systems as defined in chapter 19.28 RCW.

"Member of the firm" means the member(s) on file with the department of licensing for sole proprietorships/partnerships or with the secretary of state for corporations.

"Mezzanine" is the intermediate level or levels between the floor and ceiling of any story with an aggregate floor area

of not more than one-third of the area of the room or space in which the level or levels are located. Also see "basement" and "story."

"NEC" means National Electrical Code. Copies of the NEC are available from the National Fire Protection Association.

"NEMA" means National Electrical Manufacturer's Association. Copies of NEMA standards are available from the National Electrical Manufacturer's Association.

"NESC" means National Electrical Safety Code. Copies of the NESC are available from the Institute of Electrical and Electronics Engineers, Inc.

"NETA" means International Electrical Testing Association, Inc. Copies of the NETA standards and information are available from the International Electrical Testing Association, Inc.

"NFPA" means the National Fire Protection Association. Copies of NFPA documents are available from the National Fire Protection Association.

"NRTL" means Nationally Recognized Testing Laboratory accredited by the federal Occupational Safety and Health Administration (OSHA) after meeting the requirements of 29 C.F.R. 1910.7.

"Passive testing" (e.g., pressing of test buttons, use of testing equipment like voltage testers, clamp-on meters, removal of a device head where the wiring is terminated on a separate base plate, etc.) means testing that does not require any:

(a) Physical modification to the electrical system wiring; or

(b) Wiring to be disconnected or terminated, except as necessary for an approved electrical testing laboratory or approved engineer performing an equipment evaluation.

"Point of contact" or "point of connection" means the service point.

"Proceeding" means any matter regarding an appeal before the board including hearings before an administrative law judge.

"Public area or square" is an area where the public has general, clear, and unrestricted access.

A "quality control manual" is a document to maintain the quality control of the laboratory's method of operation. It consists of specified procedures and information for each test method responding to the requirements of the product standard. Specific information must be provided for portions of individual test methods when needed to comply with the standard's criteria or otherwise support the laboratory's operation.

"RCW" means the Revised Code of Washington. Copies of electrical RCWs are available from the department and the office of the code reviser.

"Readily accessible" means the definition as defined in NEC 100. In addition, it means that, except for keys, no tools or other devices are necessary to gain access (e.g., covers secured with screws, etc.).

Service specific definitions replacing those found in NEC Article 100:

(a) "Service drop" means the overhead service conductors from the service point to the connection to the service-entrance conductors at the building or other structure.

(b) "Service-entrance conductors, overhead system" means the service conductors between the terminals of the service equipment and a point usually outside the building, clear of building walls, where joined by tap or splice to the service drop or service point.

(c) "Service-entrance conductors, underground system" means the service conductors between the terminals of the service equipment and the point of connection to the service lateral or service point. Where the service equipment is located outside the building walls, there may be no service-entrance conductors or they may be entirely outside the building.

(d) "Service lateral" means the underground service conductors from the service point to the point of connection to the service-entrance conductors in a terminal box, meter, or other enclosure. Where there is not a terminal box, meter, or other enclosure, the point of connection is the point of entrance of the service conductors into the building.

A "stand-alone amplified sound or public address system" is a system that has distinct wiring and equipment for audio signal generation, recording, processing, amplification, and reproduction. This definition does not apply to telecommunications installations.

"Service" or "served" means that as defined in RCW 34.05.010(19) when used in relation to department actions or proceedings.

A "sign," when required by the NEC, for use as an identification method (e.g., legibly marked, legible warning notice, marked, field marked, permanent plaque/directory, etc.) means "identification plate."

"Story" is that portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above. Next above means vertically and not necessarily directly above. Also see "basement" and "mezzanine."

"Structure," for the purposes of this chapter and in addition to the definition in the NEC, means something constructed either in the field or factory that is used or intended for supporting or sheltering any use or occupancy as defined by the IBC.

"Supervision" for the purpose of supervising electrical trainees, means that the appropriately certified supervising electrician is on the same job site as the trainee being supervised. The trainee is not considered to be on the same job site if the supervising electrician and the trainee are working:

(a) In separate buildings at a single address (e.g., a campus, multibuilding industrial complex, multibuilding apartment complex, etc.) except for a single-family residence; or

(b) On an outdoor project (e.g., irrigation system, farm, street lighting, traffic signalization, etc.) where the trainee is more than one thousand feet from the supervising electrician or where the trainee is more than two hundred feet from the supervising electrician and out of sight.

"System design review" means a set of design documents that include the manufacturer's installation information, a legible one-line diagram of the system design, and calculations used to determine voltage and current within the system. The one-line diagram must show the system equipment, devices, overcurrent protection, conductor sizing, grounding, ground fault protection if required, and any sys-

tem interconnection points. The review must be available to the inspector during all inspections.

A "telecommunications local service provider" is a regulated or unregulated (e.g., by the Federal Communications Commission or the utilities and transportation commission as a telephone or telecommunications provider) firm providing telecommunications service ahead of the telecommunications network demarcation point to an end-user's facilities.

"TIA/EIA" means the Telecommunications Industries Association/Electronic Industries Association which publishes the TIA/EIA Telecommunications Building Wiring Standards. Standards and publications are adopted by TIA/EIA in accordance with the American National Standards Institute (ANSI) patent policy.

A "training school" is a public community or technical college or not-for-profit nationally accredited technical or trade school licensed by the work force training and education coordinating board under chapter 28C.10 RCW.

"Under the control of a utility" for the purposes of RCW 19.28.091 and 19.28.101 is when electrical equipment is not owned by a utility and:

(a) Is located in a vault, room, closet, or similar enclosure that is secured by a lock or seal so that access is restricted to the utility's personnel; or

(b) The utility is obligated by contract to maintain the equipment and the contract provides that access to the equipment is restricted to the utility's personnel or other qualified personnel.

"UL" means Underwriters Laboratory.

"Utility" means an electrical utility.

"Utility system" means electrical equipment owned by or under the control of a serving utility that is used for the transmission or distribution of electricity from the source of supply to the point of contact and is defined in section 90.2 (b)(5) of the National Electrical Code, 1981 edition (see RCW 19.28.010(1)).

"Utilization voltage" means the voltage level employed by the utility's customer for connection to lighting fixtures, motors, heaters, or other electrically operated equipment other than power transformers.

"Variance" is a modification of the electrical requirements as adopted in chapter 19.28 RCW or any other requirements of this chapter that may be approved by the chief electrical inspector if assured that equivalent objectives can be achieved by establishing and maintaining effective safety.

"WAC" means the Washington Administrative Code. Copies of this chapter of the WAC are available from the department and the office of the code reviser.

AMENDATORY SECTION (Amending WSR 13-03-128, filed 1/22/13, effective 3/1/13)

WAC 296-46B-110 General—Requirements for electrical installations.

003 Examination, identification, installation, and use of equipment.

(1) Listed electrical conduit can only be installed and used in accordance with its listing (i.e., as an electrical raceway for electrical conductors). If used as a sleeve for electrical conductors or other listed electrical conduits, the installa-

tion of a listed electrical conduit will be assumed to be for use as an electrical raceway and must be installed as allowed by chapter 19.28 RCW and this chapter (e.g., owner exemption, electrical contractor, etc.).

011 Deteriorating agents.

(2) Electrical equipment and wiring that has been submerged or exposed to water must comply with the following:

(a) All breakers, fuses, controllers, receptacles, lighting switches/dimmers, electric heaters, and any sealed device/equipment (e.g., relays, contactors, etc.) must be replaced.

(b) All other electrical equipment (e.g., wiring, breaker panelboards, disconnect switches, switchgear, motor control centers, boiler controls, HVAC/R equipment, electric motors, transformers, appliances, water heaters, and similar appliances) must be replaced or reconditioned by the original manufacturer or by its approved representative.

016 Flash protection.

~~(3) The flash protection marking required by NEC 110.16 must be an identification plate.)~~

022 Identification of disconnecting means.

~~((4)) (3) For the purposes of legibly marking a disconnecting means, as required in NEC 110.22, an identification plate is required unless the disconnect is a circuit breaker/fused switch installed within a panelboard and the circuit breaker/fused switch is identified by a panelboard schedule. In other than dwelling units, the identification plate must include the identification designation of the circuit source panelboard that supplies the disconnecting means.~~

030 Over 600 volts - General.

~~((5)) (4) Each cable operating at over 600 volts and installed on customer-owned systems must be legibly marked in a permanent manner at each termination point and at each point the cable is accessible. The required marking must use phase designation, operating voltage, and circuit number if applicable.~~

AMENDATORY SECTION (Amending WSR 13-03-128, filed 1/22/13, effective 3/1/13)

WAC 296-46B-210 Wiring and protection—Branch circuits.

008(A) Dwelling units GFCI requirements.

(1) In a garage or unfinished basement, a red receptacle, with a red cover plate, supplying a fire alarm system is not required to have ground-fault circuit-interrupter protection. The receptacle must be identified for use only with the fire alarm system by an identification plate or engraved cover with letters at least 1/4" high.

(2) All fixed electrical equipment with exposed grounded metal parts within an enclosed shower area or within five feet of the top inside edge of a bathtub must have ground fault circuit interrupter protection.

008(B) Other than dwelling units - GFCI requirements.

~~((2)) (3) GFCI requirements.~~

~~((a)) For the purposes of NEC 210.8(B), kitchen means any area where utensils, dishes, etc., are cleaned or where food or beverages are prepared or cooked.~~

((b) All 125-volt, 15- and 20-ampere receptacles installed in wet locations must have Class A ground fault circuit interrupter protection for personnel.))

011 Branch circuits.

((3)) (4) A raceway system or one dedicated 15-ampere minimum, 120 volt circuit must be taken to all unfinished space areas adaptable to future dwelling unit living areas that are not readily accessible to the service or branch circuit panelboard. One circuit or raceway is required for each 480 square feet or less of unfinished space area. If the total adjacent unfinished space area is less than 480 square feet, the circuit can be an extension of an existing circuit. The circuits must terminate in a suitable box(es). The box must contain an identification of the intended purpose of the circuit(s). The branch circuit panelboard must have adequate space and capacity for the intended load(s).

((012) Are fault circuit interrupter protection.

(4) NEC 210.12(B) is amended to require AFCI protection only for dwelling unit bedroom spaces.

(a) Dwelling unit bedroom spaces include spaces that:

- (i) Are used as the bedroom;
- (ii) Are accessed only through the bedroom;
- (iii) Are ancillary to the bedroom's function (e.g., closets, sitting areas, etc.);
- (iv) Contain branch circuits that supply 125-volt, 15- and 20-ampere, outlets; and
- (v) Are not bathrooms.

(b) If a new circuit(s) is added in an existing dwelling unit bedroom, an existing outlet(s) that is not connected to the new circuit(s) does not require arc-fault circuit interrupter protection if the outlet(s) was installed before December 1, 2005.

(c) If an existing circuit, installed before December 1, 2005, is extended, arc-fault circuit interrupter protection is not required.

(d) Arc-fault circuit interrupter protection is not required to be used for smoke or fire alarm outlets.))

025 Common area branch circuits.

(5) For the purpose of NEC 210.25, loads for septic or water well systems that are shared by no more than two dwelling units may be supplied from either of the two dwelling units if approved by the local building official and local health department.

052(A)(2) Dwelling unit receptacle outlets.

(6) For the purpose of NEC 210.52 (A)(2)(1), "similar openings" include the following configurations that are a permanent part of the dwelling configuration or finish:

(a) Window seating; and

(b) Bookcases or cabinets that extend from the floor to a level at least 1.7 meters (five (5) feet six (6) inches) above the floor.

Any outlets eliminated by such window seating, bookcases, or cabinets must be installed elsewhere within the room.

((052)(E)(3) Outdoor outlets.

((7) For the purposes of NEC 210.52 (E)(3), the exception will read: Balconies, decks, or porches with an area of less than 1.86 m² (20 ft²) are not required to have a receptacle installed.))

052(B) Receptacle outlet locations.

(8) Receptacle outlets installed in appliance garages may be counted as a required countertop outlet.))

052(C) Countertops.

((9)) (7) If it is impracticable to install the outlet(s) required in NEC 210.52 (C)(3), a receptacle is not required on any peninsular counter surface as required by NEC 210.52 (C)(3) so long as the peninsular counter area extends no farther than 6' from the face of the adjoining countertop. Any outlet(s) eliminated using this subsection must be installed in the wall space at the point where the peninsula connects to the wall countertop in addition to the outlets required by NEC 210.52 (C)(1).

AMENDATORY SECTION (Amending WSR 13-03-128, filed 1/22/13, effective 3/1/13)

WAC 296-46B-215 Wiring and protection—Feeders.

005 Diagrams of feeders.

(1) Other than plan review projects, the installer must provide a one-line diagram showing the service and feeder details for the project before the initial inspection can be approved for all nondwelling services or feeders:

- (a) Larger than 400 amperes; or
- (b) Over 600 volts.

The diagram must be signed and dated by the project owner if the owner is doing the work, the assigned administrator or master electrician if an electrical contractor is doing the work, or stamped with an engineer's mark and signature who is registered under chapter 18.43 RCW. The diagram must show:

(c) All services including: Wire size(s), wire type(s), service size(s) (e.g., voltage, phase, ampacity), overcurrent protection, available symmetrical fault current at the service point, equipment short-circuit rating, total load before and after demand factors have been applied including any demand factors used, and a panel schedule where multiple disconnecting devices are present; and

(d) All feeders including: Wire size(s), wire type(s), feeder size(s) (e.g., voltage, phase, ampacity), overcurrent protection, total calculated load before and after demand factors have been applied including any demand factors used, and a panel schedule(s) where multiple disconnecting devices are present.

If the installer deviates, in any way, from the service/feeder design shown on the diagram, a supplemental diagram must be supplied to the inspector showing the most recent design before inspection can proceed. Load reductions and moving branch circuit locations within a panelboard do not require a supplemental diagram. Written documentation must also be provided to the inspector that the supplemental diagram was provided to the project owner at the time of submission to the inspector.

The diagram must be available on the job site during the inspection process.

010 Ground fault protection testing.

(2) Equipment ground fault protection systems required by the NEC must be tested prior to being placed into service to verify proper installation and operation of the system as determined by the manufacturer's published instructions.

This test or a subsequent test must include all system feeders unless the installer can demonstrate, in a manner acceptable to the inspector, that there are no grounded conductor connections to the feeder(s). A firm having qualified personnel and proper equipment must perform the tests required. A copy of the manufacturer's performance testing instructions and a written performance acceptance test record signed by the person performing the test must be ((provided for the inspector's records)) available at the time of inspection. The performance acceptance test record must include test details including, but not limited to, all trip settings and measurements taken during the test.

AMENDATORY SECTION (Amending WSR 13-03-128, filed 1/22/13, effective 3/1/13)

WAC 296-46B-220 Wiring and protection—Branch circuit, feeder, and service calculations.

012 Lighting load calculations.

In determining feeder and service entrance conductor sizes and equipment ratings, a building that is designed and constructed to comply with the currently adopted Washington state energy code unit lighting power allowance table and footnotes may be used in lieu of NEC 220.12. The requirements of NEC 220.12 Exception items 1, 2, and 3 do not apply.

AMENDATORY SECTION (Amending WSR 13-03-128, filed 1/22/13, effective 3/1/13)

WAC 296-46B-250 Wiring and protection—Grounding and bonding.

028 (D)(3) Separately derived system with more than one enclosure.

(1) NEC 250.28 (D)(3) is amended to read: Where a separately derived system supplies more than a single enclosure, the system bonding jumper for each enclosure shall be sized in accordance with 250.28 (D)(1) based on the largest ungrounded feeder/tap conductor serving that enclosure, or a single system bonding jumper shall be installed at the source and sized in accordance with 250.28 (D)(1) based on the equivalent size of the largest supply conductor determined by the largest sum of the areas of the corresponding conductors of each set.

052 Grounding electrodes.

(2) Except for mobile/manufactured homes, a concrete encased grounding electrode must be installed and used at each new building or structure that is built upon a permanent concrete foundation. ((If the concrete encased grounding electrode is not available for connections, a ground ring must be installed per NEC 250.)) The electrode must comply, with NEC 250.52 (A)(3). Inspection of the electrode, may be accomplished by the following methods:

(a) At the time of inspection of other work on the project, providing the concrete encased electrode is accessible for a visual inspection;

(b) At the time of the service inspection providing the installer has provided a method so the inspector can verify the continuity of the electrode conductor along its entire length, with a minimum twenty foot linear span between testing points (e.g., attaching a length of copper wire to one end of

the electrode that reaches the location of the grounding electrode conductor that will enable the inspector to measure the resistance with a standard resistance tester). The concrete encased electrode does not have to be accessible for a visual inspection; or

(c) Other method when prior approval, on a job site basis, is given by the inspector.

If a special inspection trip is required to inspect a grounding electrode conductor, a trip fee will be charged for that inspection in addition to the normal permit fee.

Exception:

If the concrete encased grounding electrode is not available for connection, a ground ring must be installed per NEC 250 or other grounding electrode installed per NEC 250 verified to measure 25 ohms or less to ground. Resistance verification testing must be performed by an independent firm having qualified personnel and proper equipment. A copy of the testing procedures used and a written resistance test record signed by the person performing the test must be available at the time of inspection. The resistance test record must include test details including, but not limited to, the type of test equipment used, the last calibration date of the test equipment, and all measurements taken during the test.

((056)) 053 (A)(2) Resistance of rod, pipe, and plate electrodes.

(3) For rod, pipe and plate electrodes, if a ground resistance test is not performed to ensure a resistance to ground of twenty-five ohms or less, two or more electrodes as specified in NEC 250.52 must be installed a minimum of six feet apart. A temporary construction service is not required to have more than one made electrode.

(4) For services only, when multiple buildings or structures are located adjacent, but structurally separate from each other, any installed rod, pipe, or plate electrodes used for those services must be installed so that each building's or structure's electrodes are not less than 1.8 m (6 ft) apart from the adjacent building's or structure's electrodes.

068 Accessibility.

(5) The termination point of a grounding electrode conductor tap to the grounding electrode conductor must be accessible unless the connection is made using an exothermic or irreversible compression connection.

090 Bonding.

(6) Metallic stubs or valves used in nonmetallic plumbing systems are not required to be bonded to the electrical system unless required by an electrical equipment manufacturer's instructions.

(7) Hot and cold water plumbing lines are not required to be bonded together if, at the time of inspection, the inspector can determine the lines are mechanically and electrically joined by one or more metallic mixing valves.

094 Bonding for other systems.

(8) NEC 250.94 is not adopted.

(9) An accessible means external to enclosures for connecting intersystem bonding and grounding electrode conductors must be provided at the service equipment and at the disconnecting means for any additional buildings or structures by at least one of the following means:

(a) Exposed nonflexible metallic raceways;

(b) Exposed grounding electrode conductor or electrode;

(c) Approved means for the external connection of a copper or other corrosion-resistant bonding or grounding conductor to the grounded raceway or equipment.

104(B) Bonding - Other metal piping.

(10) For flexible metal gas piping, installed new or extended from an existing rigid metal piping system, either:

(a) Provide a copy of the manufacturer's bonding instructions to the inspector at the time of inspection and follow those instructions; or

(b) The bonding conductor for the gas system must:

(i) Be a minimum 6 AWG copper; and

(ii) Terminate at:

(A) An accessible location at the gas meter end of the gas piping system on either a solid iron gas pipe or a cast flexible gas piping fitting using a listed grounding connector; and

(B) Either the service equipment enclosure, service grounding electrode conductor or electrode, or neutral conductor bus in the service enclosure.

184 Solidly grounded neutral systems over 1 kV.

(11) In addition to the requirements of NEC 250.184(A), the following applies for:

(a) Existing installations.

(i) The use of a concentric shield will be allowed for use as a neutral conductor for extension, replacement, or repair, if all of the following are complied with:

(A) The existing system uses the concentric shield as a neutral conductor;

(B) Each individual conductor contains a separate concentric shield sized to no less than thirty-three and one-half percent of the ampacity of the phase conductor for three-phase systems or one hundred percent of the ampacity of the phase conductor for single-phase systems;

(C) The new or replacement cable's concentric shield is enclosed inside an outer insulating jacket; and

(D) Existing cable (i.e., existing cable installed directly in the circuit between the work and the circuit's overcurrent device) successfully passes the following tests:

• A cable maintenance high potential dielectric test. The test must be performed in accordance with the cable manufacturer's instruction or the 2011 NETA maintenance test specifications; and

• A resistance test of the cable shield. Resistance must be based on the type, size, and length of the conductor used as the cable shield using the conductor properties described in NEC Table 8 Conductor Properties.

An electrical engineer must provide a specific certification to the electrical plan review supervisor in writing that the test results of the maintenance high potential dielectric test and the resistance test have been reviewed by the electrical engineer and that the cable shield is appropriate for the installation. The electrical engineer must stamp the certification document with the engineer's stamp and signature. The document may be in the form of a letter or electrical plans.

Testing results are valid for a period of seven years from the date of testing. Cable will not be required to be tested at a shorter interval.

(ii) A concentric shield used as a neutral conductor in a multigrounded system fulfills the requirements of an equipment grounding conductor.

(b) New installations.

(i) New installations do not include extensions of existing circuits.

(ii) The use of the concentric shield will not be allowed for use as a neutral conductor for new installations. A listed separate neutral conductor meeting the requirements of NEC 250.184(A) must be installed.

AMENDATORY SECTION (Amending WSR 13-03-128, filed 1/22/13, effective 3/1/13)

WAC 296-46B-410 Equipment for general use—Luminaires.

010 Luminaires.

(1) All luminaires within an enclosed shower area or within five feet of the waterline of a bathtub must be enclosed, unless specifically listed for such use; these luminaires, with exposed metal parts that are grounded, must be ground fault circuit interrupter protected.

042 Exposed luminaire (fixture) parts.

(2) Replacement luminaires that are directly wired or attached to boxes supplied by wiring methods that do not provide a ready means for grounding and that have exposed conductive parts will be permitted only where the luminaires are provided with ground-fault circuit-interrupter protection and marked "no equipment ground."

062 Flexible cord connection of electric discharge luminaires.

((2)) (3) A ground-type attachment plug cap and receptacle connection at the source junction box is not required when the flexible cord complies with NEC 410.62 and the following:

(a) Connection to a source junction box must utilize an approved cable connector or clamp;

(b) The maximum length of the cord for a suspended pendant drop from a permanently installed junction box to a suitable tension take-up device above the pendant luminaire must not exceed six feet;

(c) The flexible cord must be supported at each end with an approved cord grip or strain relief connector fitting/device that will eliminate all stress on the conductor connections;

(d) The flexible cord must be a minimum #14 AWG copper;

(e) The flexible cord ampacity must be determined in NEC Table 400.5(A) column A;

(f) The flexible cord must be hard or extra hard usage; and

(g) A vertical flexible cord supplying electric discharge luminaires must be secured to the luminaire support as per NEC 334.30(A).

042 Exposed luminaire (fixture) parts.

(3) Replacement luminaires that are directly wired or attached to boxes supplied by wiring methods that do not provide a ready means for grounding and that have exposed conductive parts will be permitted only where the luminaires are provided with ground-fault circuit-interrupter protection and marked "no equipment ground.")

AMENDATORY SECTION (Amending WSR 03-09-111, filed 4/22/03, effective 5/23/03)

WAC 296-46B-514 Special occupancies—Motor fuel dispensing facilities.

001 General.

(1) In addition to the scope included in NEC 514.1, Article 514 NEC must be complied with for all liquified flammable gas storage or transfer facilities.

003 Classifications of locations.

(2) For the purposes of NEC 514.3 (D)(2), delete Exception No. 1 and No. 2 and replace with:

Dock, pier, or wharf sections that do not support fuel dispensers and may abut a section(s) that supports a fuel dispenser(s) are permitted to be unclassified where documented air space between the sections is provided and where flammable liquids or vapors cannot travel to these sections. See NEC 500.4(A) for documentation requirements.

011 Emergency disconnecting means - Dispensing and service stations.

((2)) (3) An emergency disconnecting means or operator must be provided to disconnect the pump or dispensing equipment serving gasoline, volatile flammable liquids, or liquefied flammable gases. The emergency disconnecting means or operator must disconnect all conductors of the circuit supplying all station dispensers and/or pumps (including the grounded conductor) simultaneously from the source(s) of supply.

((3)) (4) For installations with only one dispensing device, the emergency disconnecting means/operator may be used to satisfy subsection ((2)) (3) of this section.

((4)) (5) For multicircuit installations, an electrically held normally open contactor operated by a push-button may serve as the disconnecting means to satisfy subsection ((2)) (3) of this section. If a disconnecting pushbutton is used, the pushbutton may not function as the resetting mechanism for the electrically held contactor. The resetting means must be:

(a) Located at least fifteen feet or out of sight from the disconnecting pushbutton;

(b) Installed behind a cover or guard; and

(c) Identified with an identification plate that is substantially black in color.

((5)) (6) The disconnecting means satisfying subsection ((2)) (3) of this section must be labeled with an identification plate, with letters at least one inch high, as the emergency disconnecting means. The disconnecting means or operator must be:

(a) Substantially red in color; and

(b) For attended facilities - Must be readily accessible and must be located outdoors and within sight of the pump or dispensing equipment it controls; or

(c) For unattended facilities - Must be readily accessible and must be located within sight, but at least twenty feet from the pump or dispensing equipment it controls.

AMENDATORY SECTION (Amending WSR 08-24-048, filed 11/25/08, effective 12/31/08)

WAC 296-46B-517 Special occupancies—Health care facilities.

001 Health care facilities.

In health care facilities, the following methods must be used to determine adequate capacity and ratings of equipment providing electrical power for the essential electrical systems defined in Article 517 NEC:

(1) Systems in new facilities:

(a) ((Emergency)) Essential electrical system: The ((emergency branch)) essential electrical system must consist of ((two)) three branches known as:

(i) Life safety ((system)) branch: The feeder conductors and equipment used to supply electrical power to the life safety branch must be determined by summation of the connected loads as determined by Article 220 NEC and may not be subjected to any reduction due to the diversity of the loads. Feeder and equipment will be subject to a one hundred twenty-five percent multiplier for continuous loads in accordance with Article 220 NEC.

(ii) Critical branch ((system)): The feeder conductors and equipment must be calculated in accordance with Article 220 NEC, including a level of diversity as determined by such article.

((4)) (iii) Equipment branch: The feeder conductors and equipment used to supply electrical power to the equipment branch of the essential electrical system must be calculated in accordance with Article 220 NEC, including a level of diversity as determined by such article.

((e)) (b) Generator sizing: The rating of the generator(s) supplying electrical power to the essential system of a health care facility must meet or exceed the summation of the loads determined in (a) ((and (b))) (iii) of this subsection with no additional demand factors applied. Momentary X-ray loads may be ignored if the generator is rated at least three hundred percent of the largest momentary X-ray load connected.

(2) Existing essential systems in facilities to which additional load is to be added:

(a) Existing loads: The existing loads of the separate branches of the essential electrical system may be determined by WAC 296-46B-900 (3)(j).

(b) Added loads: Added loads to the separate branches of the essential electrical system must be determined by subsection (1) of this section.

(c) Generator sizing: The rating of the generator(s) supplying electrical power to the essential electrical system must meet or exceed the summation of the loads determined by (a) and (b) of this subsection with no additional demand factors applied.

013 Wiring methods.

(3) The last sentence of NEC 517.13(A) is modified to read: The metal raceway system, or metallic cable armor, or sheath assembly shall itself qualify as an equipment grounding conductor in accordance with 250.118 with the exception of 250.118 (10)(a).

017 Ground-fault protection.

(4) The applicability of NEC 700.27 ground-fault protection of equipment, specified by NEC 517.26 for the life safety branch, will also apply to the NEC 517 essential electrical system's critical branch(es) and equipment branch(es).

AMENDATORY SECTION (Amending WSR 13-03-128, filed 1/22/13, effective 3/1/13)

WAC 296-46B-555 Special occupancies—Marinas and boatyards. (1) For the purposes of NEC 555.1, the scope of work includes private, noncommercial docking facilities.

(2) For the purposes of NEC 555.5, transformer terminations must be located a minimum of twelve inches above the deck of a dock (datum plane requirements do not apply for this section).

(3) For the purposes of NEC 555.7, adjacent means within sight.

(4) For the purposes of NEC 555.9, all electrical connections must be installed a minimum of twelve inches above the deck of a pier unless the connections are approved for wet locations (datum plane requirements do not apply for this section).

(5) For the purposes of NEC 555.10, all enclosures must be corrosion resistant. All gasketed enclosures must be arranged with a weep hole to discharge condensation.

(6) For the purposes of NEC 555.11, gasketed enclosures are only required for wet locations.

(7) For the purposes of NEC 555.13, the following wiring methods are allowed:

(a) All wiring installed in a damp or wet location must be suitable for wet locations.

(b) Extra-hard usage portable power cables rated not less than 75°C, 600 volts, listed for wet locations and sunlight resistance and having an outer jacket rated for the environment are permitted. Portable power cables are permitted as a permanent wiring method under or within docks and piers or where provided with physical protection. The requirements of NEC 555.13 (B)(4)(b) do not apply.

(c) Overhead wiring must be installed at the perimeter of areas where boats are moored, stored, moved, or serviced to avoid possible contact with masts and other parts of boats.

(d) For the purposes of NEC 555.13 (B)(5), the wiring methods of Chapter 3 NEC will be permitted.

(8) For the purposes of NEC 555.19, receptacles must be mounted not less than twelve inches above the deck surface of the pier or dock (datum plane requirements do not apply for this section). Shore power receptacles that provide shore power for boats must be rated not less than 20 amperes and must be single outlet type and must be of the locking and grounding type or pin and sleeve type.

((9) For the purposes of NEC 555.21 (B)(1), delete exception No. 1 and No. 2 and replace with:

Deck, pier, or wharf sections that do not support fuel dispensers and may abut a section(s) that supports a fuel dispenser(s) are permitted to be unclassified where documented air space between the sections is provided and where flammable liquids or vapors cannot travel to these sections. See NEC 500.4(A) for documentation requirements.))

AMENDATORY SECTION (Amending WSR 13-03-128, filed 1/22/13, effective 3/1/13)

WAC 296-46B-600 Special equipment—Electric signs and outline lighting.

001 Electrical signs - General.

(1) All electrical signs ((within the scope of UL Standard 48, the electrical sign standard, must be listed. All electrical signs outside the scope of UL Standard 48 will be inspected for compliance with) and outline lighting, regardless of voltage, must be listed to the applicable ANSI UL Standard. Installations will be inspected for compliance with installation instructions and the NEC.

(2) Luminaires in outdoor awnings must be suitable for wet locations and be connected by a wiring method suitable for wet locations.

(3) Fluorescent luminaires must be located at least six inches from the awning fabric. Incandescent lamps or luminaires must be located at least eighteen inches from the awning fabric. A disconnecting means must be installed per Article 600 NEC.

(4) Listed awning signs must be installed in compliance with the manufacturer's instructions and the NEC.

(004) Markings.

((When neon channel signs are retrofitted from neon to an LED light source, a licensed electrical contractor may make the retrofit with the channel(s) in place so long as all the retrofit components are listed and the manufacturer's instructions for making the retrofit are available for the inspector's use at the time of the inspection and physical access is provided to allow the inspector access to all components of the retrofit. A new listing mark must be applied to the sign by the electrical contractor or a field evaluation label must be applied by an approved electrical testing laboratory.)) (5) Retrofitting signs. When listed signs or listed outline lighting are retrofitted to an LED light source, a licensed (01) general electrical contractor or (04) sign contractor using properly certified individuals or properly supervised trainees may make the retrofit in place so long as all the retrofit components and retrofit kit are listed and installation instructions applicable to the sign for making the retrofit are available for the inspector's use at the time of the inspection and physical access is provided to allow the inspector access to all components of the retrofit kit.

004 Markings.

((6) In addition to the markings required by the NEC, retrofit signs and outline lighting shall be marked with a label, made of a background color contrasting to the listed product, in a location visible during servicing near the listed retrofit subassembly that states, "This equipment contains a retrofit subassembly that may present a risk of electrical hazard. Replace parts only with same type and rating." The label's font must be Arial size 16 bold. This label may be an identification plate as described in WAC 296-46B-100 or an adhesive label approved by the electrical inspector. This label is in addition to any labeling required by the manufacturer's instructions or the UL Standard used to manufacture the retrofit kit.

007 Grounding and bonding.

((7) Remote metal parts of a section sign or outline lighting system only supplied by a remote Class 2 power supply that is listed or is a recognized component in a listed section sign or outline lighting is not required to be bonded to an equipment grounding conductor.

010 Portable or mobile outdoor electrical signs.

((7)) A weatherproof) (8) A GFCI receptacle outlet that is weatherproof with the supply cord connected must be installed within six feet of each portable or mobile electrical sign.

((8)) (9) Extension cords are not permitted to supply portable outdoor signs.

((9)) (10) All portable outdoor electrical signs must be listed ((or field evaluated)) by a qualified electrical testing laboratory accredited by the department.

030 Neon tubing.

((10)) (11) NEC 600, Part II, Field-Installed Skeleton Tubing, will apply to the installation of all neon tubing and neon circuit conductors.

(12) Field-installed skeleton tubing is not required to be listed. Installations will be inspected for compliance with installation instructions and the NEC.

AMENDATORY SECTION (Amending WSR 13-03-128, filed 1/22/13, effective 3/1/13)

WAC 296-46B-690 Solar photovoltaic systems.**002 Definitions.**

(1) Building integrated means: Photovoltaic cells, modules, panels, or arrays that are integrated into the outer surface or structure of a building and serve as the outer protective surface of that building, such as the roof, skylights, windows, or facades.

004 Installation.

(2) Support structure or foundation. For the purposes of this section, those portions of the structure support or foundation that are exclusively mechanical and are not part of a bonding or grounding path will not be considered part of the photovoltaic system as defined by this section. Such structural support or foundation may be done by the owner, registered general contractor, or licensed electrical contractor without electrical permit or inspection.

(3) A photovoltaic system design review must be ((provided)) available at the time of the first inspection.

(4) ((For utility interactive systems, persons making interconnections between solar photovoltaic system and the utility distribution network must consult the serving utility and are required to meet all additional utility standards.

((5)) The entity placing a building integrated cell, module, panel, or array is not subject to the requirements for electrical inspection, licensing, or certification so long as the work is limited to the placement and securing of the device and an electrical work permit has been previously obtained for the electrical work related to the equipment by an entity authorized to do that electrical work.

((6)) (5) All electrical work, including wiring installation, terminations, etc., necessary to complete the electrical installations must be completed by the entity authorized to do the electrical work (i.e., owner or appropriate electrical contractor).

007 Maximum voltage.

((7)) (6) The open-circuit voltage temperature coefficients supplied in the instructions of listed photovoltaic modules will be used to determine the maximum direct current photovoltaic system voltage. Otherwise the voltage will be

calculated using Table 690.7 of the NEC. For the purposes of this calculation, a temperature correction factor of 1.25 will be used unless another factor can be justified and is approved by the authority having jurisdiction.

053 Direct-current photovoltaic power source.

((8)) (7) All photovoltaic equipment and disconnecting means must be permanently identified as to their purpose, maximum voltages, and type of current within the system with an identification plate. All photovoltaic circuits must be identified at each overcurrent protection device(s) and panel directory(ies).

((9) Required "WARNING" labels as specified by NEC 690 are required to be an identification plate on or immediately adjacent to the pertinent equipment.))

NEW SECTION

WAC 296-46B-694 Wind electric systems. A wind driven generator system design review must be available at the time of the first inspection.

AMENDATORY SECTION (Amending WSR 08-24-048, filed 11/25/08, effective 12/31/08)

WAC 296-46B-700 Emergency systems.**001 Emergency systems - General.**

(1) In all health or personal care facilities defined in this chapter, educational facilities, institutional facilities, hotels, motels, and places of assembly for one hundred or more persons, all exit and emergency lights must be installed in accordance with Article 700 NEC and located as required in standards adopted by the state building code council under chapter 19.27 RCW.

((008)) 007 Signs.

(2) The sign(s) required in NEC ((700.8)) 700.7 must be placed at the service disconnecting means and the meter base if the service disconnecting means and meter base are not located within sight and within 5' of each other.

009 Emergency systems - Equipment identification.

(3) All exit and emergency lights, whether or not required by the NEC, must be installed in accordance with Article 700 NEC.

(4) All boxes and enclosures, for Article 700 NEC systems, larger than six inches by six inches, including transfer switches, generators, and power panels for emergency systems and circuits must be permanently identified with an identification plate that is substantially orange in color, except in existing health care facilities the existing nameplate identification color scheme can be retained for transfer switches, generators, and power panels for existing emergency systems that are not being replaced or modified. All other device and junction boxes for emergency systems and circuits must be substantially orange in color, both inside and outside.

((027)) 028 Coordination.

(5) The requirements for selective coordination described in NEC ((700.27)) 700.28 are not required where the emergency system was installed prior to June 1, 2006. For new emergency systems that are supplied from an existing emergency system installed prior to June 1, 2006, the new portion of the emergency system must comply with NEC

((700.27)) 700.28. The ground fault sensing function of overcurrent protective devices will only be required to selectively coordinate with the ground fault sensing functions of other overcurrent protective devices.

AMENDATORY SECTION (Amending WSR 08-24-048, filed 11/25/08, effective 12/31/08)

WAC 296-46B-701 Legally required standby systems.

((#08)) 007 Signs.

(1) The sign(s) required in NEC ((701.8)) 701.7 must be placed at the service disconnecting means and the meter base if the service disconnecting means and meter base are not located within sight and within 5' of each other.

((#18)) 027 Coordination.

(2) The requirements for selective coordination described in NEC ((701.18)) 701.27 are not required where the legally required standby system was installed prior to June 1, 2006. For new legally required standby systems that are supplied from an existing legally required standby system installed prior to June 1, 2006, the new portion of the legally required standby system must comply with NEC 701.18. The ground fault sensing function of overcurrent protective devices will only be required to selectively coordinate with the ground fault sensing functions of other overcurrent protective devices.

AMENDATORY SECTION (Amending WSR 08-24-048, filed 11/25/08, effective 12/31/08)

WAC 296-46B-702 Optional standby systems.

((#08)) 007 Signs.

The sign(s) required in NEC ((702.8)) 702.7 must be placed at the service disconnecting means and the meter base if the service disconnecting means and meter base are not located within sight and within 5' of each other.

NEW SECTION

WAC 296-46B-705 Interconnected electric power production sources. For utility interactive systems, any person making interconnections between a power production source and the utility distribution network must consult the serving utility and is required to meet all additional utility standards.

AMENDATORY SECTION (Amending WSR 13-03-128, filed 1/22/13, effective 3/1/13)

WAC 296-46B-900 Electrical plan review. ((Classification or)) Definition of occupancies.

((Classification or)) Definition of occupancies.

(1) Occupancies are ((classified and)) defined as follows:

(a) Educational facility refers to a building or portion of a building used primarily for educational purposes by six or more persons at one time for twelve hours per week or four hours in any one day. Educational occupancy includes: Schools (preschool through grade twelve), colleges, academies, universities, and trade schools.

(b) Institutional facility refers to a building or portion of a building used primarily for detention or correctional occupancies where some degree of restraint or security is required for a time period of twenty-four or more hours. Such occupancies include, but are not restricted to: Penal institutions, reformatories, jails, detention centers, correctional centers, and residential-restrained care.

(c) Health or personal care facility. Health or personal care facility refers to buildings or parts of buildings that contain, but are not limited to, facilities that are required to be licensed by the department of social and health services or the department of health (e.g., hospitals, nursing homes, private alcoholism hospitals, private psychiatric hospitals, boarding homes, alcoholism treatment facilities, maternity homes, birth centers or childbirth centers, residential treatment facilities for psychiatrically impaired children and youths, and renal hemodialysis clinics) and medical, dental, or chiropractic offices or clinics, outpatient or ambulatory surgical clinics, and such other health care occupancies where patients who may be unable to provide for their own needs and safety without the assistance of another person are treated.

(i) "Hospital" means any institution, place, building, or agency providing accommodations, facilities, and services over a continuous period of twenty-four hours or more, for observation, diagnosis, or care of two or more individuals not related to the operator who are suffering from illness, injury, deformity, abnormality, or from any other condition for which obstetrical, medical, or surgical services would be appropriate for care or diagnosis.

(ii) "Nursing home," "nursing home unit" or "long-term care unit" means a group of beds for the accommodation of patients who, because of chronic illness or physical infirmities, require skilled nursing care and related medical services but are not acutely ill and not in need of the highly technical or specialized services ordinarily a part of hospital care.

(iii) "Boarding home" means any home or other institution, however named, which is advertised, announced, or maintained for the express or implied purpose of providing board and domiciliary care to seven or more aged persons not related by blood or marriage to the operator. It must not include any home, institution, or section thereof which is otherwise licensed and regulated under the provisions of state law providing specifically for the licensing and regulation of such home, institution, or section thereof.

(iv) "Enhanced service facility (ESF)" means a facility, or a portion of a facility, that provides treatment and services to persons for whom acute inpatient treatment is not medically necessary and who have been determined by the department to be inappropriate for placement in other licensed facilities due to the complex needs that result in behavioral and security issues. For the purposes of this chapter, an enhanced services facility is not an evaluation and treatment facility certified under chapter 71.05 RCW.

(v) "Private alcoholism hospital" means an institution, facility, building, or equivalent designed, organized, maintained, or operated to provide diagnosis, treatment, and care of individuals demonstrating signs or symptoms of alcoholism, including the complications of associated substance use and other medical diseases that can be appropriately treated and cared for in the facility and providing accommodations,

medical services, or other necessary services over a continuous period of twenty-four hours or more for two or more individuals unrelated to the operator, provided that this chapter will not apply to any facility, agency, or other entity which is owned and operated by a public or governmental body.

((v))) (vi) "Private psychiatric hospital" means a privately owned and operated establishment or institution which: Provides accommodations and services over a continuous period of twenty-four hours or more, and is expressly and exclusively for observing, diagnosing, or caring for two or more individuals with signs or symptoms of mental illness who are not related to the licensee.

((vi))) (vii) "Maternity home" means any home, place, hospital, or institution in which facilities are maintained for the care of four or more women, not related by blood or marriage to the operator, during pregnancy or during or within ten days after delivery: Provided, however, that this definition will not apply to any hospital approved by the American College of Surgeons, American Osteopathic Association, or its successor.

((viii))) (viii) "Birth center" or "childbirth center" means a type of maternity home which is a house, building, or equivalent organized to provide facilities and staff to support a birth service provided that the birth service is limited to low-risk maternal clients during the intrapartum period.

((viii))) (ix) "Ambulatory surgical facility" means a facility, not a part of a hospital, providing surgical treatment to patients not requiring inpatient care in a hospital.

((ix))) (x) "Hospice care center" means any building, facility, place, or equivalent, organized, maintained, or operated specifically to provide beds, accommodations, facilities, or services over a continuous period of twenty-four hours or more for palliative care of two or more individuals, not related to the operator, who are diagnosed as being in the latter stages of an advanced disease which is expected to lead to death.

((x))) (xi) "Renal hemodialysis clinic" means a facility in a building or part of a building which is approved to furnish the full spectrum of diagnostic, therapeutic, or rehabilitative services required for the care of renal dialysis patients (including inpatient dialysis furnished directly or under arrangement). (NEC: Ambulatory Health Care ((Center)) Occupancy.)

((xi))) (xii) "Medical, dental, and chiropractic clinic" means any clinic or physicians' office where patients are not regularly kept as bed patients for twenty-four hours or more. Electrical plan review is not required.

((xii))) (xiii) "Residential treatment facility" means a facility licensed and operated twenty-four hours per day to provide health care to persons receiving services for a mental disorder or substance abuse.

((xiii))) (xiv) "Group care facility" means a facility other than a foster-family home maintained or operated for the care of a group of children on a twenty-four-hour basis.

Plan review for educational, institutional or health care facilities/buildings.

(2) Plan review is a part of the electrical inspection process; its primary purpose is to determine:

(a) That service/feeder conductors are calculated and sized according to the proper NEC or WAC article or section;

(b) The classification of hazardous locations; and
(c) The proper design of emergency and standby systems.

(3) Electrical plan review.

(a) Electrical plan review is not required for:

(i) Low voltage systems:

(ii) Lighting specific projects that result in an electrical load reduction on each feeder involved in the project;

((ii) Low voltage systems;)

(iii) Heating and cooling specific retrofit projects that result in an electrical load reduction on each existing feeder involved in the project, provided there is not a corresponding increase in the available fault current in any feeder.

(iv) Stand-alone utility fed services that do not exceed 250 volts, 400 amperes where the project's distribution system does not include:

(A) Emergency systems other than listed unit equipment per NEC 700.12(F):

(B) An essential electrical system defined in NEC 517.2; or

(C) A required fire pump system.

(v) Modifications to existing electrical installations where all of the following conditions are met:

(•) (A) Service or distribution equipment involved is rated not more than 400 amperes and does not exceed 250 volts or for lighting circuits not exceeding 277 volts to ground;

(•) (B) Does not involve emergency systems other than listed unit equipment per NEC 700.12(F);

(•) (C) Does not involve branch circuits or feeders of an essential electrical system as defined in NEC 517.2; and

(•) (D) Service and feeder load calculations are increased by 5% or less.

((iv) Stand-alone utility fed services that do not exceed 250 volts, 400 amperes where the project's distribution system does not include:

• Emergency systems other than listed unit equipment per NEC 700.12(F);

• Critical branch circuits or feeders as defined in NEC 517.2; or

• A required fire pump system.

(v) Heating and cooling specific retrofit projects that result in an electrical load reduction on each existing feeder involved in the project, provided there is not a corresponding increase in the available fault current in any feeder. Existing and new load calculations must be provided to the inspector at the time of the inspection.) (vi) For installations outlined in (a)(ii), (iii), and (v) of this subsection to be considered, the following must be available to the electrical inspector before the work is initiated:

(A) A clear and adequate description of the project's scope;

(B) A load calculation(s);

(C) What the load changes are, providing both before and after panel schedules as needed; and

(D) Provide information showing that the service and feeder(s) supplying the panel(s) where the work is taking place has adequate capacity for any increased load and has code compliant overcurrent protection for that supply.

(b) Electrical plan review is required for all other new or altered electrical projects in educational, institutional, or health care occupancies ((~~classified or~~)) defined in this chapter.

(c) If a review is required, the electrical plan must be submitted for review and approval before the electrical work is begun.

(d) Electrical plans.

(i) The plan must be submitted for plan review prior to beginning any electrical inspection. If a plan is rejected during the plan review process, no electrical inspection(s) may proceed until the plan is resubmitted and a conditional acceptance is granted.

(ii) The submitted plan will receive a preliminary review within seven business days after receipt by the department or city authorized to do electrical inspections.

(iii) If the submitted plan:

((a)) (A) Is rejected at the preliminary review, no inspection(s) will be made on the project.

((b)) (B) Receives conditional acceptance, the permit holder may request a preliminary inspection(s) in writing to the department or city authorized to do electrical inspections. The request must note that the preliminary inspection(s) is conditional and subject to any alterations required from the final plan review process.

(iv) Once the submitted plan has preliminary plan review approval, a copy of the submitted plan must be available on the job site for use by the electrical inspector.

(v) The final approved plan must be available on the job site, for use by the electrical inspector, after it is approved, but no later than prior to the final electrical inspection.

(vi) If the final approved plan requires changes from the conditionally accepted plan, alterations to the project may be required to make the project comply with the approved plan.

(vii) If the installer deviates from the service/feeder design shown on the final approved plan, a supplemental plan must be submitted for review before inspection can proceed. Load reductions or moving branch circuit locations within a panelboard do not require resubmission.

(e) All electrical plans for educational facilities, hospitals, and nursing homes must be prepared by, or under the direction of, a consulting engineer registered under chapter 18.43 RCW, and chapters 246-320, 180-29, and 388-97 WAC and stamped with the engineer's mark and signature.

(f) Refer plans for review to the Electrical Section, Department of Labor and Industries, P.O. Box 44460, Olympia, Washington 98504-4460 or the city authorized to do electrical inspections.

(g) Plans for projects within cities that perform electrical inspections must be submitted to that city for review.

(h) Plans to be reviewed must be legible, identify the name and classification of the facility, clearly indicate the scope and nature of the installation and the person or firm responsible for the electrical plans. The plans must clearly show the electrical installation or alteration in floor plan view, include all switchboard and panelboard schedules and when a service or feeder is to be installed or altered, must include a riser diagram, load calculation, fault current calculation, and interrupting rating of equipment. Where existing electrical systems are to supply additional loads, the plans

must include documentation that proves adequate capacity and ratings. The plans must be submitted with a plan review submittal form available from the department or city authorized to do electrical inspections. Fees must be calculated based on the date the plans are received by the department or city authorized to do electrical inspections.

(i) The department may perform the plan review for new or altered electrical installations of other types of construction when the owner or electrical contractor makes a voluntary request for review. A city authorized to do electrical inspections may require a plan review of any electrical system.

(j) For existing structures where additions or alterations to feeders and services are proposed, NEC 220.87(1) may be used. If NEC 220.87(1) is used, the following is required:

(i) The date of the measurements.

(ii) A statement attesting to the validity of the demand data, signed by a professional electrical engineer or the electrical administrator of the electrical contractor performing the work.

(iii) A diagram of the electrical system identifying the point(s) of measurement.

(iv) Building demand measured continuously on the highest-loaded phase of the feeder or service over a thirty-day period, with the demand peak clearly identified. Demand peak is defined as the maximum average demand over a fifteen-minute interval.

Notes to Tables 900-1 and 900-2.

1. A city authorized to do electrical inspections may require plan review on facility types not reviewed by the department.

Table 900-1
Health or Personal Care Facilities

Health or Personal Care Facility Type	Plan Review Required
Hospital	Yes
Nursing home unit or long-term care unit	Yes
Boarding home	Yes
Assisted living facility	Yes
Private alcoholism hospital	Yes
Private psychiatric hospital	Yes
Maternity home	Yes
Ambulatory surgery facility	Yes
Renal hemodialysis clinic	Yes
Residential treatment facility	Yes
<u>Enhanced service facility</u>	<u>Yes</u>
Adult residential rehabilitation center	Yes

Table 900-2
Educational and Institutional Facilities, Places of Assembly, or Other Facilities

Educational, Institutional, or Other Facility Types	Plan Review Required
Educational	Yes
Institutional	Yes

AMENDATORY SECTION (Amending WSR 13-03-128, filed 1/22/13, effective 3/1/13)

WAC 296-46B-901 General—Electrical work permits and fees.

General.

(1) When an electrical work permit is required by chapter 19.28 RCW or this chapter, inspections may not be made, equipment must not be energized, or services connected unless:

(a) A valid electrical work permit is obtained and posted per subsection (5) of this section;

(b) The classification or type of facility to be inspected and the exact scope and location of the electrical work to be performed are clearly shown on the electrical work permit;

(c) The address where the inspection is to be made is clearly identifiable from the street, road or highway that serves the premises; and

(d) Driving directions are provided for the inspectors' use.

(2) Except as allowed for annual permits, an electrical work permit is valid for only one specific job site address.

Permit - Responsibility for.

(3) Each person, firm, partnership, corporation, or other entity must furnish a valid electrical work permit for the installation, alteration, or other electrical work performed or to be performed solely by that entity. When the original purchaser is replaced, another entity may request, in writing, written approval from the chief electrical inspector to take responsibility for the work of the original installing entity under the original permit. If permission is not granted the entity must obtain a new permit for the remaining work.

Two or more entities may never work under the same permit. Each electrical work permit application must be signed by the electrical contractor's administrator (or designee) or the person, or authorized representative of the firm, partnership, corporation, or other entity that is performing the electrical installation or alteration. Permits purchased electronically do not require a handwritten signature. An entity designated to sign electrical permits must provide written authorization of the purchaser's designation when requested by the department or city that is authorized to do electrical inspections.

(4) Permits to be obtained by customers. Whenever a serving electrical utility performs work for a customer under one of the exemptions in WAC 296-46B-925 and the work is subject to inspection, the customer is responsible for obtaining all required permits.

(5) Except as allowed for Class B permits, where an electrical work permit is required, the work permit must be obtained and posted at the job site or the electrical work per-

mit number must be conspicuously posted and identified as the electrical work permit number on or adjacent to the electrical service or feeder panel supplying power to the work prior to beginning any electrical work and at all times until the electrical inspection process is completed.

Exceptions:

(a) For an owner, an electrical work permit for emergency like-in-kind repairs to an existing electrical system(s) must be obtained no later than the next business day after the work is begun.

(b) For an electrical contractor, in a city's jurisdiction where the city is authorized to do electrical inspections and does not have a provisional permit system, an electrical work permit for emergency like-in-kind repairs to an existing electrical system(s) must be obtained and posted, per the city's requirements at the job site no later than the next business day after the work is begun.

(6) Fees must be paid in accordance with the inspection fee schedule in Part C of this chapter. The amount of the fee due is calculated based on the fee effective at the date payment is made. If the project is required to have an electrical plan review, the plan review fees will be based on the fees effective at the date the plans are received by the department for review. In a city where the department is doing inspections as the city's contractor, a supplemental fee may apply.

Permit - Requirements for.

(7) As required by chapter 19.28 RCW or this chapter, an electrical work permit is required for the installation, alteration, or maintenance of all electrical systems or equipment except for:

(a) Travel trailers;

(b) Class A basic electrical work which includes:

(i) The **like-in-kind replacement** of lamps; a single set of fuses; a single battery smaller than 150 amp hour; contactors, relays, timers, starters, circuit boards, or similar control components; one household appliance; circuit breakers; single-family residential luminaires; ((up to)) a maximum of five snap switches, dimmers, receptacle outlets, thermostats, heating elements, luminaire ballasts with an exact same ballast; component(s) of electric signs, outline lighting, or skeleton neon tubing when replaced on-site by an appropriate electrical contractor and when the sign, outline lighting or skeleton neon tubing electrical system is not modified; one ten horsepower or smaller motor.

For the purposes of this section, "circuit breaker" means a circuit breaker that is used to provide overcurrent protection only for a branch circuit, as defined in NEC 100.

(ii) Induction detection loops described in WAC 296-46B-300(2) and used to control gate access devices;

(iii) Heat cable repair; and

(iv) Embedding premanufactured heat mats in tile grout where the mat is listed by an approved testing laboratory and comes from the manufacturer with preconnected lead-in conductors. All listing marks and lead-in conductor labels must be left intact and visible for evaluation and inspection by the installing electrician and the electrical inspector.

(v) The disconnection of electrical circuits from their overcurrent protection device for the specific purpose of removing the electrical wiring or equipment for disposal.

Unless specifically noted, the exemptions listed do not include: The replacement of an equipment unit, assembly, or enclosure that contains an exempted component or combination of components (e.g., an electrical furnace/heat pump, industrial milling machine, etc.) or any appliance/equipment described in this section for Class B permits.

In the department's jurisdiction, a provisional electrical work permit label may be posted in lieu of an electrical work permit. If a provisional electrical work permit label is used, an electrical work permit must be obtained within two working days after posting the provisional electrical work permit label. See WAC 296-46B-907(2) for provisional label requirements.

(c) The following types of systems and circuits are considered exempt from the requirements for licensing and permitting described in chapter 19.28 RCW. The electrical failure of these systems does not inherently or functionally compromise safety to life or property.

- (i) Low-voltage thermocouple derived circuits;
- (ii) Low-voltage circuits for built-in residential vacuum systems;
- (iii) Low-voltage circuits for underground landscape sprinkler systems;
- (iv) Low-voltage circuits for underground landscape lighting; and
- (v) Low-voltage circuits for residential garage doors.

For these types of systems and circuits to be considered exempt, the following conditions must be met:

(A) The power supplying the installation must be derived from a listed Class 2 power supply;

(B) The installation and termination of line voltage equipment and conductors supplying these systems is performed by appropriately licensed and certified electrical contractors and electricians;

(C) The conductors of these systems do not pass through fire-rated walls, fire-rated ceilings or fire-rated floors in other than residential units; and

(D) Conductors or luminaires are not installed in installations covered by the scope of Article 680 NEC (swimming pools, fountains, and similar installations).

(8) An electrical work permit is required for all installations of telecommunications systems on the customer side of the network demarcation point for projects greater than ten telecommunications outlets. All backbone installations regardless of size and all telecommunications cable or equipment installations involving penetrations of fire barriers or passing through hazardous locations require permits and inspections. For the purposes of determining the inspection threshold for telecommunications projects greater than ten outlets, the following will apply:

(a) An outlet is the combination of jacks and mounting hardware for those jacks, along with the associated cable and telecommunications closet terminations, that serve one workstation. In counting outlets to determine the inspection threshold, one outlet must not be associated with more than six standard four-pair cables or more than one twenty-five-pair cable. Therefore, installations of greater than sixty standard four-pair cables or ten standard twenty-five-pair cables require permits and inspections. (It is not the intent of the statute to allow large masses of cables to be run to worksta-

tions or spaces serving telecommunications equipment without inspection. Proper cable support and proper loading of building structural elements are safety concerns. When considering total associated cables, the telecommunications availability at one workstation may count as more than one outlet.)

(b) The installation of greater than ten outlets and the associated cables along any horizontal pathway from a telecommunications closet to work areas during any continuous ninety-day period requires a permit and inspection.

(c) All telecommunications installations within the residential dwelling units of single-family, duplex, and multi-family dwellings do not require permits or inspections. In residential multifamily dwellings, permits and inspections are required for all backbone installations, all fire barrier penetrations, and installations of greater than ten outlets in common areas.

(d) No permits or inspections are required for installation or replacement of cord and plug connected telecommunications equipment or for patch cord and jumper cross-connected equipment.

(e) Definitions of telecommunications technical terms will come from chapter 19.28 RCW, this chapter, TIA/EIA standards, and NEC.

Inspection and approval.

(9) Requests for inspections.

(a) Requests for inspections must be made no later than three business days after completion of the electrical/telecommunications installation or one business day after any part of the installation has been energized, whichever occurs first.

(b) Requests for after hours or weekend inspections must be made by contacting the local electrical inspection supervisor at least three working days prior to the requested date of inspection. The portal-to-portal inspection fees required for after hours or weekend inspections are in addition to the cost of the original electrical work permit.

(c) Inspections for annual electrical maintenance permits and annual telecommunications permits may be done on a regular schedule arranged by the permit holder with the department.

(10) Inspections will not be made until all permit fees are paid in full.

Permit - Duration/refunds.

(11) Electrical work permits will expire one year after the date of purchase unless permission is granted by the chief electrical inspector or when the permit is closed or completed by the inspector. Refunds are not available for:

(a) Expired electrical work permits;

(b) Electrical work permit fee items, within the department's jurisdiction, where the electrical installation has begun or an inspection requested for that work; or

(c) The first twenty-five dollars of each permit purchase - Application fee.

All refund requests must be made using the Request for Refund application form.

Permit - Annual telecommunications.

(12) The chief electrical inspector or city that is authorized to do electrical inspections can allow annual permits for the inspection of telecommunications installations to be pur-

chased by a building owner or licensed electrical/telecommunications contractor. The owner's full-time telecommunications maintenance staff, or a licensed electrical/telecommunications contractor(s) can perform the work done under this annual permit. The permit holder is responsible for correcting all installation deficiencies. The permit holder must make available, to the electrical inspector, all records of all the telecommunications work performed and the valid electrical or telecommunications contractor's license numbers for all contractors working under the permit. Upon request, the chief electrical inspector may allow the annual permit to be used for multiple worksites or addresses.

Permit - Annual electrical.

(13) The chief electrical inspector or city that is authorized to do electrical inspections can allow annual permits for the inspection of electrical installations to be purchased by a building owner or licensed electrical contractor. This type of permit is available for commercial/industrial locations employing a full-time electrical maintenance staff or having a yearly maintenance contract with a licensed electrical contractor. Upon request, the chief electrical inspector may allow the annual permit to be used for multiple worksites or addresses.

The permit holder is responsible for correcting all installation deficiencies. The permit holder must make available, to the electrical inspector, all records of all electrical work performed.

This type of electrical permit may be used for retrofit, replacement, maintenance, repair, upgrade, and alterations to electrical systems at a plant or building location. This type of permit does not include new or increased service or new square footage.

Permit - Temporary construction project installations.

(14) For temporary electrical installations, the department will consider a permit applicant to be the owner per RCW 19.28.261 under the conditions below:

Any person, firm, partnership, corporation, or other entity registered as a general contractor under chapter 18.27 RCW will be permitted to install a single electrical service per address for the purposes of temporary power during the construction phase of a project, when all of the following conditions are met:

(a) The installation is limited to the mounting and bracing of a preassembled pole or pedestal mounted service, the installation of a ground rod or ground plate, and the connection of the grounding electrode conductor to the ground rod or plate;

(b) The total service size does not exceed 200 amperes, 250 volts nominal;

(c) The service supplies no feeders;

(d) Branch circuits not exceeding 50 amperes each are permitted, provided such branch circuits supply only receptacles that are either part of the service equipment or are mounted on the same pole;

(e) The general contractor owns the electrical equipment;

(f) The general contractor has been hired by the property owner as the general contractor for the project;

(g) The general contractor must purchase an electrical work permit for the temporary service, request inspection, and obtain approval prior to energizing the service.

Posting of corrections.

(15) Electrical installations found to be not in compliance with approved standards must be corrected within fifteen calendar days of notification by the department as required in RCW 19.28.101(3). The notifications will be posted electronically on the electrical permit inspection results. A printed copy of the correction notification will be posted by the inspector at the job site for permits not purchased electronically.

AMENDATORY SECTION (Amending WSR 13-03-128, filed 1/22/13, effective 3/1/13)

WAC 296-46B-906 Inspection fees. To calculate inspection fees, the amperage is based on the conductor ampacity or the overcurrent device rating. The total fee must not be less than the number of progress inspection (one-half hour) units times the progress inspection fee rate from subsection (8) of this section, PROGRESS INSPECTIONS.

The amount of the fee due is calculated based on the fee effective at the date of a department assessed fee (e.g., plan review or fee due) or when the electrical permit is purchased.

(1) Residential.

(a) Single- and two-family residential (New Construction).

Notes:

(1) Square footage is the area included within the surrounding exterior walls of a building exclusive of any interior courts. (This includes any floor area in an attached garage, basement, or unfinished living space.)

(2) "Inspected with the service" means that a separate service inspection fee is included on the same electrical work permit.

(3) "Inspected at the same time" means all wiring is to be ready for inspection during the initial inspection trip.

(4) An "outbuilding" is a structure that serves a direct accessory function to the residence, such as a pump house or storage building. Outbuilding does not include buildings used for commercial type occupancies or additional dwelling occupancies.

(i) First 1300 sq. ft.	\$90.30
Each additional 500 sq. ft. or portion of	\$28.90
(ii) Each outbuilding or detached garage - Inspected at the same time as a dwelling unit on the property	\$37.60
(iii) Each outbuilding or detached garage - Inspected separately	\$59.50
(iv) Each swimming pool - Inspected with the service	\$59.50
(v) Each swimming pool - Inspected separately	\$90.30
(vi) Each hot tub, spa, or sauna - Inspected with the service	\$37.60
(vii) Each hot tub, spa, or sauna - Inspected separately	\$59.50
(viii) Each septic pumping system - Inspected with the service	\$37.60
(ix) Each septic pumping system - Inspected separately	\$59.50

(b) Multifamily residential and miscellaneous residential structures, services and feeders (New Construction).

Each service and/or feeder

Ampacity	Service/Feeder	Additional Feeder
0 to 200	\$97.40	\$28.90

Ampacity	Service/Feeder	Additional Feeder
201 to 400	\$121.10	\$59.50
401 to 600	\$166.40	\$82.80
601 to 800	\$213.50	\$113.70
801 and over	\$304.50	\$228.40

(c) Single or multifamily altered services or feeders including circuits.

(i) Each altered service and/or altered feeder

Ampacity	Service/Feeder
0 to 200	\$82.80
201 to 600	\$121.10
601 and over	\$182.60

(ii) Maintenance or repair of a meter or mast (no alterations to the service or feeder) \$44.80

(d) Single or multifamily residential circuits only (no service inspection).

Note:

Altered or added circuit fees are calculated per panelboard. Total cost of the alterations in an individual panel should not exceed the cost of a complete altered service or feeder of the same rating, as shown in subsection (1) RESIDENTIAL (c) (table) of this section.

(i) 1 to 4 circuits (see note above) \$59.50
 (ii) Each additional circuit (see note above) \$6.40

(e) Mobile homes, modular homes, mobile home parks, and RV parks.

(i) Mobile home or modular home service or feeder only \$59.50
 (ii) Mobile home service and feeder \$97.40

(f) Mobile home park sites and RV park sites.

Note:

For master service installations, see subsection (2) COMMERCIAL/INDUSTRIAL of this section.

(i) First site service or site feeder \$59.50
 (ii) Each additional site service; or additional site feeder \$37.60
 inspected at the same time as the first service or feeder

(2) Commercial/industrial.

(a) New service or feeder, and additional new feeders inspected at the same time (includes circuits).

Note:

For large COMMERCIAL/INDUSTRIAL projects that include multiple feeders, "inspected at the same time" can be interpreted to include additional inspection trips for a single project. The additional inspections must be for electrical work specified on the permit at the time of purchase. The permit fee for such projects must be calculated using this section. However, the total fee must not be less than the number of progress inspection (one-half hour) units times the progress inspection fee rate from subsection (8) PROGRESS INSPECTIONS of this section.

Ampacity	Service/Feeder	Additional Feeder
0 to 100	\$97.40	\$59.50
101 to 200	\$118.60	\$75.80
201 to 400	\$228.40	\$90.30
401 to 600	\$266.20	\$106.30
601 to 800	\$344.30	\$144.80
801 to 1000	\$420.30	\$175.20
1001 and over	\$458.50	\$244.50

(b) Altered services/feeders (no circuits).

(i) Service/feeder

Ampacity	Service/Feeder
0 to 200	\$97.40
201 to 600	\$228.40
601 to 1000	\$344.30
1001 and over	\$382.40

(ii) Maintenance or repair of a meter or mast (no alterations to the service or feeder) \$82.80

(c) Circuits only.

Note:

Altered/added circuit fees are calculated per panelboard. Total cost of the alterations in a panel (or panels) should not exceed the cost of a new feeder (or feeders) of the same rating, as shown in subsection (2) COMMERCIAL/INDUSTRIAL (2)(a)(table) above.

(i) First 5 circuits per branch circuit panel \$75.80

(ii) Each additional circuit per branch circuit panel \$6.40

(d) Over 600 volts surcharge per permit. \$75.80

(3) Temporary service(s).

Notes:

(1) See WAC 296-46B-590 for information about temporary installations.
 (2) Temporary stage or concert inspections requested outside of normal business hours will be subject to the portal-to-portal hourly fees in subsection (11) OTHER INSPECTIONS. The fee for such after hours inspections will be the greater of the fee from this subsection or the portal-to-portal fee.

Temporary services, temporary stage or concert productions.

Ampacity	Service/Feeder	Additional Feeder
0 to 60	\$52.10	\$26.70
61 to 100	\$59.50	\$28.90
101 to 200	\$75.80	\$37.60
201 to 400	\$90.30	\$44.90
401 to 600	\$121.10	\$59.50
601 and over	\$137.40	\$68.40

(4) Irrigation machines, pumps, and equipment.

Irrigation machines.

(a) Each tower - When inspected at the same time as a service and feeder from (2) COMMERCIAL/INDUSTRIAL \$6.40

(b) Towers - When not inspected at the same time as a service and feeder - 1 to 6 towers \$90.30

(c) Each additional tower \$6.40

(5) Miscellaneous - Commercial/industrial and residential.

(a) A Class 2 low-voltage thermostat and its associated cable controlling a single piece of utilization equipment or a single furnace and air conditioner combination. \$44.90

(i) First thermostat \$44.90

(ii) Each additional thermostat inspected at the same time as the first \$13.90

(b) Class 2 or 3 low-voltage systems and telecommunications systems.

Includes all telecommunications installations, fire alarm, nurse call, energy management control systems, industrial and automation control systems, lighting control systems, and similar Class 2 or 3 low-energy circuits and equipment not included in WAC 296-46B-908 for Class B work.

(i) First 2500 sq. ft. or less \$52.10

(ii) Each additional 2500 sq. ft. or portion thereof \$13.90

(c) Signs and outline lighting.

(i) First sign (no service included)	\$44.90
(ii) Each additional sign inspected at the same time on the same building or structure	\$21.20

(d) Berth at a marina or dock.**Note:**

Five berths or more will be permitted to have the inspection fees based on appropriate service and feeder fees from section (2) COMMERCIAL/INDUSTRIAL above.

(i) Berth at a marina or dock	\$59.50
(ii) Each additional berth inspected at the same time	\$37.60

(e) Yard pole, pedestal, or other meter loops only.

(i) Yard pole, pedestal, or other meter loops only	\$59.50
(ii) Meters installed remote from the service equipment and inspected at the same time as a service, temporary service or other installations	\$13.90

(f) ((Emergency)) Inspection((s)) appointment requested for outside of normal working hours.

Regular fee plus surcharge of: \$113.70

(g) Generators.**Note:**

Permanently installed generators: Refer to the appropriate residential or commercial new/alter service or feeder section.

Portable generators: Permanently installed transfer equipment for portable generators \$82.80

(h) Electrical - Annual permit fee.**Note:**

See WAC 296-46B-901(13).

For commercial/industrial location employing full-time electrical maintenance staff or having a yearly maintenance contract with a licensed electrical contractor. Note, all yearly maintenance contracts must detail the number of contractor electricians necessary to complete the work required under the contract. This number will be used as a basis for calculating the appropriate fee. Each inspection is based on a 2-hour maximum.

Inspections	Fee
1 to 3 plant electricians	12 \$2,189.70
4 to 6 plant electricians	24 \$4,381.80
7 to 12 plant electricians	36 \$6,572.30
13 to 25 plant electricians	52 \$8,764.40
More than 25 plant electricians	52 \$10,956.50

(i) Telecommunications - Annual permit fee.**Notes:**

(1) See WAC 296-46B-901(12).

(2) Annual inspection time required may be estimated by the purchaser at the rate for "OTHER INSPECTIONS" in this section, charged portal-to-portal per hour.

For commercial/industrial location employing full-time telecommunications maintenance staff or having a yearly maintenance contract with a licensed electrical/telecommunications contractor.

2-hour minimum	\$181.00
Each additional hour, or portion thereof, of portal-to-portal inspection time	\$90.30

(j) Permit requiring ditch cover inspection only.

Each 1/2 hour, or portion thereof \$44.90

(k) Cover inspection for elevator/conveyance installation. This item is only available to a licensed/registered elevator contractor.

\$75.80

(6) Carnival inspections.**(a) First carnival field inspection each calendar year.**

\$21.20

(i) Each ride and generator truck	\$21.20
(ii) Each remote distribution equipment, concession, or gaming show	\$6.40

(iii) If the calculated fee for first carnival field inspection above is less than \$100.50, the minimum inspection fee will be:	\$113.70
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(b) Subsequent carnival inspections.

(i) First ten rides, concessions, generators, remote distribution equipment, or gaming show	\$113.70
(ii) Each additional ride, concession, generator, remote distribution equipment, or gaming show	\$6.40

(c) Concession(s) or ride(s) not part of a carnival.

(i) First field inspection each year of a single concession or ride, not part of a carnival	\$90.30
(ii) Subsequent inspection of a single concession or ride, not part of a carnival	\$59.50

(7) Trip fees.

(a) Requests by property owners to inspect existing installations. (This fee includes a maximum of one hour of inspection time. All inspection time exceeding one hour will be charged at the rate for progressive inspections.)

\$90.30

(b) Submitter notifies the department that work is ready for inspection when it is not ready.

\$44.90

(c) Additional inspection required because submitter has provided the wrong address or incomplete, improper or illegible directions for the site of the inspection.

\$44.90

(d) More than one additional inspection required to inspect corrections; or for repeated neglect, carelessness, or improperly installed electrical work.

\$44.90

(e) Each trip necessary to remove a noncompliance notice.

\$44.90

(f) Corrections that have not been made in the prescribed time, unless an exception has been requested and granted.

\$44.90

(g) Installations that are covered or concealed before inspection.

\$44.90

(8) Progress inspections.**Note:**

The fees calculated in subsections (1) through (6) of this section will apply to all electrical work. This section will be applied to a permit where the permit holder has requested additional inspections beyond the number supported by the permit fee calculated at the rate in subsections (1) through (6) of this section.

On partial or progress inspections, each 1/2 hour.

\$44.90

(9) Plan review.

(a) Plan review fee is 35% of the electrical work permit fee as determined by WAC 296-46B-906.

35%

(b) Plan review submission fee.

\$75.80

(c) Supplemental submissions of plans per hour or fraction of an hour of review time.

\$90.30

(d) Plan review ((shipping and)) handling fee.

\$21.20

(10) Out-of-state inspections.

(a) Permit fees will be charged according to the fees listed in this section.

(b) Travel expenses:

All travel expenses and per diem for out-of-state inspections are billed following completion of each inspection(s). These expenses can include, but are not limited to: Inspector's travel time, travel cost and per diem at the state rate. Travel time is hourly based on the rate in subsection (11) of this section.

(11) **Other inspections.**

Inspections not covered by above inspection fees must be charged portal-to-portal per hour: \$90.30

(12) **Variance request processing fee.**

Variance request processing fee. This fee is nonrefundable once the transaction has been validated. \$90.30

(13) **Marking of industrial utilization equipment.**

(a) Standard(s) letter review (per hour of review time). \$90.30

(b) Equipment marking - Charged portal-to-portal per hour: \$90.30

(c) All travel expenses and per diem for in/out-of-state review and/or equipment marking are billed following completion of each inspection(s). These expenses can include, but are not limited to: Inspector's travel time, travel cost and per diem at the state rate. Travel time is hourly based on the rate in (b) of this subsection.

(14) **Class B basic electrical work labels.**

(a) Block of twenty Class B basic electrical work labels (not refundable). \$248.00

(b) Reinspection of Class B basic electrical work to assure that corrections have been made (per 1/2 hour timed from leaving the previous inspection until the reinspection is completed). See WAC 296-46B-908(5). \$44.90

(c) Reinspection of Class B basic electrical work because of a failed inspection of another Class B label (per 1/2 hour from previous inspection until the reinspection is completed). See WAC 296-46B-908(5). \$44.90

(15) **Provisional electrical work permit labels.**

Block of twenty provisional electrical work permit labels. \$248.00

AMENDATORY SECTION (Amending WSR 13-03-128, filed 1/22/13, effective 3/1/13)

WAC 296-46B-908 Class B permits.

Class B electrical work permit - Use.

(1) The Class B basic electrical random inspection process (Class B process) may only be used by:

(a) Licensed electrical/telecommunication contractors; or

(b) Health care, commercial, or industrial facilities using an employee(s) who is an appropriately certified electrician(s) after requesting, in writing, and receiving permission from the chief electrical inspector.

Each entity doing work must use a separate label.

(2) Before beginning the work:

(a) For Class B labels obtained after February 28, 2013:

(i) Immediately upon posting the Class B label/number, the purchaser must use the department's online Class B system to enter the job site information for an unused Class B label obtained by the purchaser. If the posting occurs on a weekend or a federal/state holiday, the purchaser must use the online system to enter the information no later than the first business day after posting the label/number;

(ii) The person identified as the installer on the Class B label must post the Class B label or label number, in a conspicuous permanent manner, at the:

(A) Main service/feeder location supplying the structure or system; or

(B) Purchaser's equipment, or on the equipment conductors if the equipment is not in place.

(iii) The Class B label is valid immediately upon the purchaser completing the job site information in the department's online Class B system.

(b) For Class B labels obtained before March 1, 2013:

(i) The purchaser must fully enter the job site information on the job site and contractor portions of the Class B label.

(ii) The person identified as the installer on the Class B label must post the completed job site copy, in a conspicuous permanent manner, at the:

(A) Main service/feeder location supplying the structure or system;

(B) Purchaser's equipment, or on the conductors if the equipment is not available.

(iii) The purchaser must return the contractor copy to the Department of Labor and Industries, Electrical Section, Chief Electrical Inspector, P.O. Box 44460, Olympia, WA 98504-4460 within fifteen working days after the job site portion of the Class B installation label is affixed.

(iv) The Class B label is valid immediately upon posting on the job site.

(3) Class B labels will be sold in blocks and are nonrefundable and nontransferable.

(4) Class B label installations will be inspected on a random basis as determined by the department.

(5) A progress inspection fee is required for any inspection required when a correction(s) is issued as a result of the inspection of a Class B label.

(6) Any entity using the Class B process may be audited for compliance with the provisions for purchasing, inspection, reporting of installations, and any other requirement of usage.

(7) A separate label is required for each line item listed below in subsection (10) of this section. For example, if the work includes an item under subsection (10)(a) and (b)(i) of this section, two labels are required.

(8) An entity using a Class B basic inspection label is restricted to using no more than two labels per week per job site.

(9) All Class B work must be completed within fifteen days after the label is validated. If the work is not completed, another Class B may be posted.

Except that, in a one- or two-family residential structure, a label is valid for ninety days after the label is validated, so long as all work described on the label is performed by the purchaser.

(10) Class B work includes the following:

(a) Extension of not more than one branch electrical circuit limited to 120 volts and 20 amps each where:

(i) No cover inspection is necessary. For the purposes of this section, cover inspection does not include work covered by any surface that may be removed for inspection without damaging the surface; and

(ii) The extension does not supply more than two outlets as defined by the NEC.

(b) Single like-in-kind replacement of:

(i) A motor larger than 10 horsepower; or

(ii) The internal wiring of a furnace, air conditioner, refrigeration unit or household appliance; or

(iii) An electric/gas/oil furnace not exceeding 240 volts and 100 amps and associated Class 2 low voltage wiring when the furnace is connected to an existing branch circuit. For the purposes of this section, a boiler is not a furnace; or

(iv) An individually controlled electric room heater (e.g., baseboard, wall, fan forced air, etc.), air conditioning unit, heat pump unit, or refrigeration unit not exceeding 240 volts, 40 minimum circuit amps and associated Class 2 low voltage wiring when the unit is connected to an existing branch circuit; or

(v) Circuit modification required to install not more than five residential load control devices in a residence where installed as part of an energy conservation program sponsored by an electrical utility and where the circuit does not exceed 240 volts and 40 amps.

(c) The following low voltage systems:

(i) Repair and replacement of devices not exceeding 100 volt-amperes in Class 2, Class 3, or power limited low voltage systems in one- and two-family dwellings; or

(ii) Repair and replacement of devices not exceeding 100 volt-amperes in Class 2, Class 3, or power limited low voltage systems in other buildings, provided the equipment is not for fire alarm or nurse call systems and is not located in an area classified as hazardous by the NEC; or

(iii) The installation of Class 2 or 3 device(s) or wiring for thermostat, audio, security, burglar alarm, intercom, amplified sound, public address, or access control systems where the installation does not exceed twenty devices or five thousand square feet. This does not include fire alarm, nurse call, lighting control, industrial automation/control or energy management systems; or

(iv) Telecommunications cabling and equipment requiring inspection in RCW 19.28.470 where the installation does not exceed twenty devices or five thousand square feet;

(d) The replacement of not more than ten standard receptacles with GFCI receptacles;

(e) The conversion of not more than ten snap switches to dimmers or occupancy sensors for the use of controlling a luminaire(s) conversion;

(f) The like-in-kind replacement of ((up to)) a maximum of twenty: Paddle fans, luminaires not exceeding 277 volts and 20 amperes; snap switches, dimmers, receptacle outlets, line voltage thermostats, heating elements, or luminaire ballasts((, circuit breakers, contractors, relays, timers, starters, circuit boards, fuses, or similar control components));

(g) The replacement of not more than two luminaires with paddle fans if a listed fan box has been previously installed to support the luminaires;

(h) The replacement of not more than four batteries rated not larger than 150 amp hours each that supply power to a single unit of equipment (e.g., uninterruptable power supply, photovoltaic storage system, control panel, etc.);

(i) The installation or repair of equipment powered by a stand-alone solar photovoltaic source where the:

(i) Electrical equipment requires no field assembly except for the attachment and electrical connection of the solar photovoltaic source to the equipment, the installation and attachment to a grounding electrode, and the placement of the equipment on a pad, pole, or other structure;

(ii) Solar photovoltaic source and the equipment operates at less than 15 volts DC;

(iii) Solar photovoltaic source is the only source of external power; and

(iv) Equipment and the solar photovoltaic source are appropriately labeled as a single unit. The label must be by an approved electrical testing laboratory or for equipment used for traffic control labeled according to WAC 296-46B-010(21).

(11) Class B basic electrical work does not include any work in:

(a) Areas classified as Class I, Class II, Class III, or Zone locations per NEC 500; or

(b) Areas regulated by NEC 517 or 680; or

(c) Any work where electrical plan review is required; or

(d) Fire alarm, nurse call, lighting control, industrial automation/control or energy management systems.

AMENDATORY SECTION (Amending WSR 13-03-128, filed 1/22/13, effective 3/1/13)

WAC 296-46B-909 Electrical/telecommunications contractor's license, administrator certificate and examination, master electrician certificate and examination, electrician certificate and examination, copy, and miscellaneous fees.

Notes:

(1) The department will deny renewal of a license, certificate, or permit if an individual owes money as a result of an outstanding final judgment(s) to the department or is in revoked status. The department will deny application of a license, certificate, or permit if an individual is in suspended status or owes money as a result of an outstanding final judgment(s) to the electrical program.

(2) Certificates may be prorated for shorter renewal periods in one-year increments. Each year or part of a year will be calculated to be one year.

(3) The amount of the fee due is calculated based on the fee effective at the date payment is made.

(1) General or specialty contractor's license per twenty-four month period. (Nonrefundable after license has been issued.)

(a) Initial application or renewal made in person, by mail, or by fax \$266.20

(b) Renewal fully completed using the online web process \$230.20

(c) Reinstatement of a general or specialty contractor's license after a suspension \$53.90

(2) Master electrician/administrator/electrician/trainee certificate.

(a) Examination application (nonrefundable)

Administrator certificate examination application. (Required only for department administered examinations.) (Not required when testing with the department's contractor.) \$33.30

(b) Examination fees (nonrefundable)

Note:

Normal examination administration is performed by a state authorized contractor. The fees for such examinations are set by contract with the department. For written examinations administered by the department, use the following fee schedule.

(i) Master electrician or administrator first-time examination fee (when administered by the department)	\$80.40
(ii) Master electrician or administrator retest examination fee (when administered by the department)	\$94.20
(iii) ((J Journeyman)) <u>Journey level</u> or specialty electrician examination fee (first test or retest when administered by the department)	\$60.50
(iv) Certification examination review fee	\$124.60
(c) Original certificates (nonrefundable after certificate has been issued)	
(i) Electrical administrator original certificate (except 09 telecommunication)	\$120.40
(ii) Telecommunications administrator original certificate (for 09 telecommunications)	\$80.10
(iii) Master electrician exam application (includes original certificate and application processing fee) (\$33.30 is nonrefundable after application is submitted)	\$154.00
(iv) ((J Journeyman)) <u>Journey level</u> or specialty electrician application (includes original certificate and application processing fee) (\$33.30 is nonrefundable after application is submitted)	\$86.30
(v) Training certificate	
(A) Initial application made in person, by mail, or by fax	\$42.30
(B) Initial application fully completed online using the online web process	\$36.40
(C) 0% supervision modified training certificate. Includes trainee update of hours (i.e., submission of affidavit of experience) (\$51.20 is nonrefundable after application is submitted)	\$77.00
(D) 75% supervision modified training certificate.	\$51.20
(E) Unsupervised training certificate as allowed by RCW 19.28.161 (4)(b).	\$25.40
(d) Certificate renewal (nonrefundable)	
(i) Master electrician or administrator certificate renewal	
(A) Renewal made in person, by mail, or by fax	\$152.20
(B) Renewal fully completed using the online web process	\$132.20
(ii) Telecommunications (09) administrator certificate renewal	
(A) Renewal made in person, by mail, or by fax	\$101.40
(B) Renewal fully completed using the online web process	\$87.50
(iii) Late renewal of master electrician or administrator certificate	
(A) Renewal made in person, by mail, or by fax	\$304.40
(B) Renewal fully completed using the online web process	\$264.50
(iv) Late renewal of telecommunications (09) administrator certificate	
(A) Renewal made in person, by mail, or by fax	\$202.90
(B) Renewal fully completed using the online web process	\$175.00
(v) ((J Journeyman)) <u>Journey level</u> or specialty electrician certificate renewal	
(A) Renewal made in person, by mail, or by fax	\$80.10
(B) Renewal fully completed using the online web process	\$69.70

(vi) Late renewal of ((journeyman)) <u>journey level</u> or specialty electrician certificate	
(A) Renewal made in person, by mail, or by fax	\$160.30
(B) Renewal fully completed using the online web process	\$139.50
(vii) Trainee update of hours outside of renewal period (i.e., submission of affidavit of experience outside of the timeline in WAC 296-46B-942 (8)(d))	\$51.20
(viii) Trainee certificate renewal	
(A) Renewal made in person, by mail, or by fax	\$51.20
(B) Renewal fully completed using the online web process when the affidavit of experience is submitted per WAC 296-46B-942 (8)(d)	\$44.70
(ix) Late trainee certificate renewal	
(A) Renewal made in person, by mail, or by fax	\$71.80
(B) Renewal fully completed using the online web process	\$62.50
(e) Certificate - Reinstatement (nonrefundable)	
(i) Reinstatement of a suspended master electrician or administrator's certificate (in addition to normal renewal fee)	\$53.90
(ii) Reinstatement of suspended ((journeyman)) <u>journey level</u> , or specialty electrician certificate (in addition to normal renewal fee)	\$25.40
(f) Assignment/unassignment of master electrician/administrator designation (nonrefundable)	\$39.90
(3) Certificate/license.	
(a) Replacement for lost or damaged certificate/license. (Nonrefundable.)	\$17.50
(b) Optional display quality General Master Electrician certificate.	\$28.40
(4) Continuing education courses or instructors. (Nonrefundable.)	
(a) If the course or instructor review is performed by the electrical board or the department	
The course or instructor review	\$51.30
(b) If the course or instructor review is contracted out by the electrical board or the department	
(i) Continuing education course or instructor submittal and approval (per course or instructor)	As set in contract
(ii) Applicant's request for review, by the chief electrical inspector, of the contractor's denial	\$124.90
(5) Copy fees. (Nonrefundable.)	
(a) Certified copy of each document (maximum charge per file):	\$56.70
(i) First page:	\$25.40
(ii) Each additional page:	\$2.10
(b) RCW or WAC printed document:	\$5.60
(6) Training school program review fees. Initial training school program review fee. (Nonrefundable.)	
(a) Initial training school program review fee submitted for approval. Valid for three years or until significant changes in program content or course length are implemented (see WAC 296-46B-971(4)).	\$589.90
(b) Renewal of training school program review fee submitted for renewal. Valid for 3 years or until significant changes in program content or course length are implemented (see WAC 296-46B-971(4)).	\$294.90

AMENDATORY SECTION (Amending WSR 13-03-128, filed 1/22/13, effective 3/1/13)

WAC 296-46B-915 Civil penalty schedule.

Notes: Each day that a violation occurs on a job site may be a separate offense.

Once a violation of chapter 19.28 RCW or chapter 296-46B WAC becomes a final judgment, any additional violation within three years becomes a "second" or "additional" offense subject to an increased penalty as set forth in the following tables.

In case of a serious violation of the provisions of chapter 19.28 RCW or as described in WAC 296-46B-990, the department may double the penalty amount, up to ten thousand dollars shown in subsections (1) through (13) of this section.

A person, firm, partnership, corporation or other entity who violates a provision of chapter 19.28 RCW or chapter 296-46B WAC is liable for a civil penalty based upon the following schedule.

(1) Offering to perform, submitting a bid for, advertising, installing or maintaining cables, conductors or equipment:

(a) That convey or utilize electrical current without having a valid electrical contractor's license.

(b) Used for information generation, processing, or transporting of signals optically or electronically in telecommunications systems without having a valid telecommunications contractor's license.

First offense:	\$500
Second offense:	\$1,500
Third offense:	\$3,000
Each offense thereafter:	\$6,000

(2) Employing an individual for the purposes of chapter 19.28 RCW who does not possess a valid certificate of competency or training certificate to do electrical work.

First offense:	\$250
Each offense thereafter:	\$500

(3) Performing electrical work without having a valid certificate of competency or electrical training certificate.

First offense:	\$250
Each offense thereafter:	\$500

(4) Employing electricians and electrical trainees for the purposes of chapter 19.28 RCW in an improper ratio. Contractors found to have violated this section three times in a three-year period must be the subject of an electrical audit in accordance with WAC 296-46B-975.

First offense:	\$250
Each offense thereafter:	\$500

(5) Failing to provide proper supervision to an electrical trainee as required by chapter 19.28 RCW. Contractors found to have violated this section three times in a three-year period must be the subject of an electrical audit in accordance with WAC 296-46B-975.

First offense:	\$250
Each offense thereafter:	\$500

(6) Working as an electrical trainee without proper supervision as required by chapter 19.28 RCW.

First offense:	\$50
Second offense:	\$250
Each offense thereafter:	\$500

(7) Offering, bidding, advertising, or performing electrical or telecommunications installations, alterations or maintenance outside the scope of the firm's specialty electrical or telecommunications contractors license.

First offense:	\$500
Second offense:	\$1,500
Third offense:	\$3,000
Each offense thereafter:	\$6,000

(8) Selling or exchanging electrical equipment associated with spas, hot tubs, swimming pools or hydromassage bathtubs which are not listed by an approved laboratory.

First offense:	\$500
Second offense:	\$1,000
Each offense thereafter:	\$2,000

Definition:

The sale or exchange of electrical equipment associated with hot tubs, spas, swimming pools or hydromassage bathtubs includes to: "Sell, offer for sale, advertise, display for sale, dispose of by way of gift, loan, rental, lease, premium, barter or exchange."

(9) Covering or concealing installations prior to inspection.

First offense:	\$250
Second offense:	\$1,000
Each offense thereafter:	\$2,000

(10) Failing to make corrections within fifteen days of notification by the department.

Exception:

Where an extension has been requested and granted, this penalty applies to corrections not completed within the extended time period.

First offense:	\$250
Second offense:	\$1,000
Each offense thereafter:	\$2,000

(11) Failing to get an inspection or obtain an electrical/telecommunications work permit or post a provisional electrical work permit label prior to beginning the electrical/telecommunications installation or alteration.

Exception:

In cases of emergency repairs, for owners, to existing electrical/telecommunications systems, this penalty will not be charged if the permit is obtained and posted no later than the business day following beginning work on the emergency repair.

Standard/provisional permit offenses:

First offense:	\$250
Second offense:	\$1,000
Each offense thereafter:	\$2,000

Class B offenses:

Failure to post a Class B label or number for Class B eligible work:

First offense:	\$100
Second offense:	\$250
Each offense thereafter:	\$1,000

For other Class B offenses:

First offense:	\$100
Second offense:	\$250
Each offense thereafter:	\$1,000

(12) Violating chapter 19.28 RCW duties of the electrical/telecommunications administrator or master electrician.

(a) Failing to be a member of the firm or a supervisory employee and must be available during working hours to carry out the duties of an administrator or master electrician.

First offense:	\$1,000
Second offense:	\$1,500
Each offense thereafter:	\$3,000

(b) Failing to ensure that all electrical work complies with the electrical installation laws and rules of the state.

First offense:	\$100
Second offense:	\$250
Third offense:	\$1,000
Each offense thereafter:	\$3,000

(c) Failing to ensure that the proper electrical safety procedures are used.

First offense:	\$500
Second offense:	\$1,500
Each offense thereafter:	\$3,000

(d) Failing to ensure that inspections are obtained and that all electrical labels, permits, and certificates required to perform electrical work are used.

Standard/provisional permit offenses:

First offense:	\$250
Each offense thereafter:	\$500

((Failure to obtain a Class B label or number for Class B eligible work:))

Class B offenses:

First offense:	\$100
Second offense:	\$250
Each offense thereafter:	\$1,000

(e) Failing to ensure that all electrical licenses, required to perform electrical work are used (i.e., work performed must be in the allowed scope of work for the contractor).

First offense:	\$500
Second offense:	\$1,500
Third offense:	\$3,000
Each offense thereafter:	\$6,000

(f) Failing to see that corrective notices issued by an inspecting authority are complied with within fifteen days.

Exception: Where an extension has been requested and granted, this penalty applies to corrections not completed within the extended time period.

First offense:	\$250
Second offense:	\$1,000
Each offense thereafter:	\$2,000

(g) Failing to notify the department in writing within ten days if the master electrician or administrator terminates the relationship with the electrical contractor.

First offense:	\$500
Second offense:	\$1,000
Each offense thereafter:	\$3,000

(13) **Violating any of the provisions of chapter 19.28 RCW or chapter 296-46B WAC which are not identified in subsections (1) through (12) of this section.**

RCW 19.28.161 through 19.28.271 and the rules developed pursuant to them.

First offense:	\$250
Each offense thereafter:	\$500

All other chapter 19.28 RCW provisions and the rules developed pursuant to them.

First offense:	\$250
Second offense:	\$750
Each offense thereafter:	\$2,000

AMENDATORY SECTION (Amending WSR 13-03-128, filed 1/22/13, effective 3/1/13)

WAC 296-46B-925 Electrical/telecommunications contractor's license. General.

(1) The department will issue an electrical/telecommunications contractor's license that will expire twenty-four months following the date of issue to a person, firm, partnership, corporation or other entity that complies with requirements for such license in chapter 19.28 RCW. An electrical/telecommunications contractor's license will not be issued to or renewed for a person, firm, or partnership unless the Social Security number, date of birth, and legal address of each member(s) (see WAC 296-46B-100 definition for member), are submitted with the application. The department may issue an electrical/telecommunications contractor's license for a period greater or less than twenty-four months for the purpose of equalizing the number of electrical contractor's licenses that expire each month. The department may prorate the electrical/telecommunications contractor's license fee according to the license period.

The applicant, upon application and renewal, must provide the department with the Social Security number, date of birth, and legal address of each member(s).

(2) Combination specialty contractor's license. The department may issue a combination specialty contractor's license to a firm that qualifies for more than one specialty electrical contractor's license. The assigned administrator must be certified in all specialties applicable to the combination specialty contractor's license. The license will plainly indicate the specialty licenses' codes included in the combination license. An administrator assigned to a telecommunications contractor must be certified as a telecommunications administrator. A combination license will not be issued for telecommunications (09).

(3) See RCW 19.28.041(7) for a contractor doing domestic pumping work as defined in RCW 18.106.010 (10)(c).

(4) The department may deny application, renewal, or reinstatement of an electrical/telecommunications contractor's license if a firm, an owner, partner, member, or corporate officer owes money as a result of an outstanding final judgment(s) to the department.

Electrical/telecommunications contractor bond, cash or securities deposit.

(5) Bond, cash, or securities deposit.

(a) The electrical/telecommunications contractor may furnish the department with a cash or security deposit to meet the bond requirements in lieu of posting a bond. A cash or security deposit assigned to the department for bond requirements will be held in place for one year after the contractor's license is expired, revoked, or the owner notifies the department in writing that the company is no longer doing business in the state of Washington as an electrical/telecommunications contractor.

tions contractor. Upon written request, the cash or security deposit will then be released by the department providing there is no pending legal action against the contractor under chapter 19.28 RCW of which the department has been notified.

(b) See RCW 19.28.041(7) for a contractor doing domestic pumping work as defined in RCW 18.106.010 (10)(c).

Telecommunications contractor insurance.

(6) To obtain a telecommunications contractor's license, the applicant must provide the department with an original certificate of insurance naming the department of labor and industries, electrical section as the certificate holder. Insurance coverage must be no less than twenty thousand dollars for injury or damages to property, fifty thousand dollars for injury or damage including death to any one person, and one hundred thousand dollars for injury or damage including death to more than one person. The insurance will be considered a continuing obligation unless canceled by the insurance company. The insurance company must notify the department in writing ten days prior to the effective date of said cancellation or failure to renew.

(7) The telecommunications contractor may furnish the department with an assigned account to meet the insurance requirements in lieu of a certificate of insurance. An account assigned to the department for insurance requirements will be held in place for three years after the contractor's license is expired, revoked, or the owner notifies the department in writing that the company is no longer doing business in the state of Washington as a telecommunications contractor. Upon written request, the account then will be released by the department providing there is no pending legal action against the contractor under chapter 19.28 RCW of which the department has been notified.

Electrical/telecommunications contractor exemptions.

(8) The following types of systems and circuits are considered exempt from the requirements for licensing and permitting described in chapter 19.28 RCW. The electrical failure of these systems does not inherently or functionally compromise safety to life or property.

Low-voltage thermocouple derived circuits and low-voltage circuits for:

- (a) Built-in residential vacuum systems;
- (b) Underground landscape sprinkler systems;
- (c) Underground landscape lighting; and
- (d) Residential garage doors.

For these types of systems and circuits to be considered exempt, the following conditions must be met:

(e) The power supplying the installation must be derived from a listed Class 2 power supply;

(f) The installation and termination of line voltage equipment and conductors supplying these systems is performed by appropriately licensed and certified electrical contractors and electricians;

(g) The conductors of these systems do not pass through fire-rated walls, fire-rated ceilings or fire-rated floors in other than residential units; and

(h) Conductors or luminaires are not installed in installations covered by the scope of Article 680 NEC (swimming pools, fountains, and similar installations).

(9) Firms who clean and/or replace lamps in luminaires are not included in the requirements for licensing in chapter 19.28 RCW. This exemption does not apply to electric signs as defined in the NEC.

(10) Firms who install listed plug and cord connected utilization equipment are not included in the requirements for licensing in chapter 19.28 RCW. The plug and cord must be a single listed unit consisting of a molded plug and cord and not exceeding 250 volt 60 ampere single phase. The plug and cord can be field installed per the manufacturer's instructions and the product listing requirements. The utilization equipment must be a single manufactured unit, including the plug and cord, that does not require any electrical field assembly except for the installation of the plug and cord and is allowed to be plug and cord connected by the NEC. Firms who perform field electrical servicing, maintaining, or repairing of plug-in equipment or household appliances are not included in this exemption.

(11) Firms regulated by the Federal Communications Commission or the utilities and transportation commission, supplying telecommunications service to an end-user's property, are not required to be licensed as a telecommunications contractor under chapter 19.28 RCW for telecommunications installations made ahead of the telecommunications network demarcation point.

(12) Unregulated firms, supplying telecommunications service to an end-user's property, are not required to be licensed as a telecommunications contractor under chapter 19.28 RCW for telecommunications installations made ahead of the telecommunications network demarcation point.

(13) Leaseholders. For electrical installations, maintenance, or alterations to existing buildings only, any person, firm, partnership, corporation, or other entity holding a valid, signed lease from the property owner authorizing the leaseholder to perform electrical work, on the property the leaseholder occupies, will be allowed to purchase an electrical permit(s) and do electrical work on or within the property described in the lease. The lessee and/or his or her regularly employed employees must perform the electrical installation, maintenance and alteration.

The lessee who performs the electrical maintenance or installation work must be the sole occupant of the property or space. Property owners or leaseholders cannot perform electrical work on new buildings for rent, sale, or lease, without the proper electrical licensing and certification. Refer to RCW 19.28.261 for exemptions from licensing and certification.

(14) Assisting a householder. A friend, neighbor, relative, or other person (including a certified electrician) may assist a householder, at his/her residence in the performance of electrical work on the condition that the householder is present when the work is performed and the person assisting the householder does not accept money or other forms of compensation for the volunteer work. For the purposes of this subsection, a residence is a single-family residence.

(15) Volunteering to do electrical work. There are no exceptions from the electrical contractor's license or electri-

cian certification requirements to allow persons to perform volunteer electrical work for anyone other than a householder or a nonprofit organization as allowed by RCW 19.28.091(7). For the purpose of this section, volunteer means that there is no remuneration or receiving of goods or services in return for electrical installations performed.

(16) Farms or place of business. See RCW 19.28.261 for licensing/certification exemptions allowed for the owner(s) of a farm or other place of business and for the employees of the owner.

(17) The licensing and certification requirements of chapter 19.28 RCW do not apply to persons or firms who remove electrical wiring and/or equipment for the purpose of disposal when all conductors, raceways, and equipment to be disposed of have been physically separated from the source of power by a properly certified electrician employed by a licensed electrical contractor, or person(s) meeting the exemptions listed in RCW 19.28.261. Removal of a component or only a portion of an equipment unit is considered electrical maintenance and does not qualify for this exemption.

Exemptions - Electrical utility and electrical utility's contractor.

((17))) (18) Electrical utility exemptions.

(a) Utility system exemption - RCW 19.28.010(1) and 19.28.091(1).

(i) Neither a serving electrical utility nor a contractor or subcontractor employed by the serving electrical utility is required to have an electrical contractor's license for work on the "utility system" or on service connections or on meters or other apparatus used to measure the consumption of electricity.

(ii) Exemption from inspection. The work of a serving electrical utility and its contractor(s) on the work exempted by NEC 90.2 (b)(5), 1981 edition, is not subject to inspection.

(b) Street/area lighting exemption - RCW 19.28.091(2)(a).

(i) On:

(A) Publicly owned streets, parks, athletic/play fields, beaches, and similar areas where the public has general, clear, and unrestricted access; or

(B) Outside area lighting installed on a utility owned pole(s) that is used to support the utility's electric distribution wiring or equipment that supplies a private property owner's property, the serving electrical utility is considered to be an owner and is not required to have an electrical contractor's license or electrical permit to install or work on wiring or equipment, owned by the utility and used in the lighting of those streets/areas.

(ii) On other privately or publicly owned property (e.g., private streets, parking lots, businesses, schools, etc.), the serving utility is not required to have an electrical contractor's license or electrical permit to install or work on outside street/area lighting where the light(s) is supplied directly from the utility system and installed according to the NESC or NEC.

This work is considered to be utility type work.

An electric utility is not allowed to install or work on street/area lighting:

(A) When the area is privately or publicly owned and the public does not have general, clear, and otherwise unrestricted access such as: Industrial property, residential property, or other property where the public's access is restricted in any manner.

(B) Where the lighting is supplied from a source of power derived from a customer-owned electrical system.

(C) Where the lighting or wiring is attached to a building or other customer-owned structure.

(D) If the utility does not directly perform the installation or work, it may only contract the work to an appropriately licensed electrical contractor(s). See RCW 19.28.091(3).

(c) Customer-owned equipment exemption - RCW 19.28.091 (2)(b). A serving electrical utility is not required to have an electrical contractor's license to work on electrical equipment owned by a commercial, industrial, or public institution customer if:

(i) The utility has not solicited such work; and

(ii) Such equipment:

(A) Is located outside a building or structure; and

(B) The work performed is ahead of the secondary side of the customer's transformer(s) which supplies power at the customer's utilization voltage.

If the utility does not directly perform the installation or work, it may only contract the work to an appropriately licensed electrical contractor(s). See RCW 19.28.091(3).

This work is considered to be utility type work.

The owner will provide the electrical work permit and be responsible for requesting inspections and for ensuring the work is installed per chapter 19.28 RCW and this chapter.

Exemptions - Electrical utility telecommunications transition equipment installations, maintenance and repair.

((18))) (19) No license, inspection or other permit will be required by the department of any electric utility or, of any person, firm, partnership or corporation or other entity employed or retained by an electric utility or its contractor, because of work in connection with the installation, maintenance, or repair of telecommunications transition equipment located ahead of the utility's telecommunications network demarcation point on the outside of a building or other structure when the work is performed by a qualified person consistent with the requirements of the National Electric Code (NEC) except as provided in (a) and (b) of this subsection:

(a) The following exceptions to the NEC will be permitted:

(i) An additional service disconnect supplying power to the transition equipment can be connected on the supply side of the main service disconnect supplying general power to the building;

(ii) Service entrance disconnects may be separated when clearly labeled;

(iii) The service disconnect used for supplying power to the transition equipment must be connected to the grounding electrode system using:

(A) # 8 AWG copper or larger grounding electrode conductor if protected from physical damage; or

(B) # 6 AWG copper or larger grounding electrode conductor if not protected from physical damage;

(iv) Use of equipment or materials that have been listed/field evaluated by a recognized independent testing laboratory or the department;

(v) Low-voltage circuits do not require a separate disconnecting means and may be grounded to the transition equipment grounding system;

(vi) Any other variance to the NEC must be approved by the department.

(b) A variance recommended by a joint utility standards group composed of representatives of both public and private utilities or certified by a professional engineer will be approved by the department unless the recommendation is inconsistent with meeting equivalent objectives for public safety.

(c) For the purposes of this section, a qualified worker is employed by a utility or its contractor and is familiar with the construction or operation of such lines and/or equipment that concerns his/her position and who is proficient with respect to the safety hazards connected therewith, or, one who has passed a journey status examination for the particular branch of the electrical trades with which he/she may be connected or is in a recognized training or apprenticeship course and is supervised by a journey level person.

(d) Although the utility is responsible for inspection and approval of the installation, including the selection of material and equipment, the department reserves the right to audit worker qualifications and inspect such installations semiannually for conformance with the requirements of (a), (b) and (c) of this subsection but will not collect a permit fee for such inspection or audit.

(e) If a utility fails to meet the requirements of this section, the department may require the utility to develop and submit a remedial action plan and schedule to attain compliance with this section which may be enforced by the department.

(f) This exemption will be in addition to any other exemption provided in chapter 19.28 RCW, this chapter or other applicable law.

Exemptions - Independent electrical power production equipment exemption.

((19)) (20) An independent electrical power production entity is not required to have an electrical contractor's license to work on electrical equipment used to produce or transmit electrical power if:

(a) The entity is:

(i) The owner or operator of the generating facility is regulated by the Federal Energy Regulatory Commission (FERC);

(ii) A municipal utility, or other form of governmental electric utility, or by an electrical cooperative or mutual corporation; or

(iii) The owner or operator of the generating facility is an independent electrical power producer and the facility generates electrical power only for sale to one or more:

(A) Electrical utilities regulated by FERC, municipal utility, or other form of governmental utility, or to an electric cooperative or mutual corporation; and

(B) The electrical power generated by the facility is not used for self-generation or any other on- or ((offsite)) off-site

function other than sale to one or more utilities regulated by FERC or by one or more state public utilities commissions, or to a PUD, municipal utility, or other form of governmental electric utility, or to an electric cooperative or mutual corporation.

(b) The entity must supply the chief electrical inspector a valid master business license issued by the department of licensing, state of Washington so that the entity's status as a revenue generating business can be confirmed.

(c) The entity has entered into an agreement to sell electricity to a utility or to a third party; and

(d) The electrical equipment is used to transmit electricity from the terminals of an electrical generating unit located on premises to the point of interconnection with a utility system.

(e) The electrical power production facility's generation capacity exceeds 100 KVA.

(f) Notwithstanding that a generating facility may be granted an exemption pursuant to this section, the facility will be subject to all the requirements of chapter 19.28 RCW if the facility at any time in the future ceases to comply with the requirements for exemption. All site facilities not exclusively and directly required to generate and/or distribute the electrical power generated on the site are subject to all the licensing and inspection requirements of chapter 19.28 RCW. All facility services, feeders, and circuits not exclusively and directly required to generate and/or distribute the electrical power (e.g., lights, outlets, etc.) must comply with all requirements of chapter 19.28 RCW for licensing and inspection. Facility circuits supplied to equipment required for the function of generation equipment (e.g., block heaters, power supplies, wind generator tower circuits, etc.) must comply with all requirements of chapter 19.28 RCW for licensing and inspection up to and including the equipment termination point.

(g) The generation equipment must not be mounted on or in any building or structure not required for generation of power (e.g., schools, offices, residences, apartment buildings, hospitals, etc.).

Exemptions - Telegraph and telephone utility and telegraph and telephone utility's contractor.

((20)) (21) Telegraph and telephone utility exempted equipment and installations. No person, firm, partnership, corporation, or other entity is required to have an electrical contractor's license for work on electrical equipment and installations thereof that are exempted by RCW 19.28.151. For the purposes of this exemption, "building or buildings used exclusively for that purpose" may mean any separate building or space of a building where the space is separated from the remainder of the building by a two-hour fire wall. The telecommunications or telegraph equipment within such a space must supply telephone or telegraph service to other customer's buildings (i.e., telecommunications or telegraph equipment cannot solely supply the building containing the telephone/telegraph space).

Exemptions - Manufacturers of electrical/telecommunications products.

((21)) (22) Manufacturers of electrical/telecommunications systems products will be allowed to utilize a manufac-

turer's authorized factory-trained technician to perform initial calibration, testing, adjustment, modification incidental to the startup and checkout of the equipment, or replacement of components within the confines of the specific product, without permit or required licensing:

(a) Provided the product:

- (i) Has not been previously energized;
- (ii) Has been recalled by the Consumer Product Safety Commission;
- (iii) Is within the manufacturer's written warranty period; or

(iv) The manufacturer is working under the written request and supervision of an appropriately licensed electrical contractor.

(b) Except for the replacement of individual components, as allowed above, this exemption does not include the initial installation, removal, or replacement of the electrical product. Modifications to the equipment, as designated above, must not include any changes to the original intended configuration nor changes or contact with external or field-connected components or wiring.

(c) The manufacturer will be responsible for obtaining any required reapproval/recertification from the original listing or field evaluation laboratory.

(d) The manufacturer must notify the department if any modifications have been made or reapproval/recertification is required.

Premanufactured electric power generation equipment assemblies and control gear.

((22)) (23) Premanufactured electric power generation equipment assemblies and control gear.

(a) Manufacturers of premanufactured electric power generation equipment assemblies and control gear will be allowed to utilize a manufacturer's authorized factory-trained technician to perform initial calibration, testing, adjustment, modification incidental to the startup and checkout of the equipment, or replacement of components within the confines of the specific product, without permit or required licensing, provided:

(i) For transfer equipment, the product has not been previously energized or is within the manufacturer's written warranty period;

(ii) Modifications to the equipment, as designated above, must not include any changes to the original intended configuration nor changes or contact with external or field-connected components or wiring;

(iii) The manufacturer will be responsible for obtaining any required reapproval/recertification from the original listing or field evaluation laboratory; or

(iv) The manufacturer must notify the department if any modifications have been made or reapproval/recertification is required.

(b) Premanufactured electric power generation equipment assemblies are made up of reciprocating internal combustion engines and the associated control gear equipment. Control gear equipment includes control logic, metering, and annunciation for the operation and the quality of power being generated by the reciprocating internal combustion engine and does not have the function of distribution of power.

(c) Modifications of a transfer switch must not include changes to the original intended configuration or changes or contact with externally field-connected components.

(d) For the purposes of this subsection, the following work on premanufactured electric power generation equipment assemblies is not exempt from the requirements of chapter 19.28 RCW:

(i) Installation or connection of conduit or wiring between the power generation unit, transfer switch, control gear;

(ii) Installation of the transfer switch;

(iii) Connections between the power generation unit, transfer switch, control gear, and utility's transmission or distribution systems;

(iv) Connections between the power generation unit, transfer switch, control gear, and any building or structure; or

(v) Test connections with any part of:

- (A) The utility's transmission or distribution system; or
- (B) The building or structure.

((23)) (24) The installation, maintenance, or repair of a medical device deemed in compliance with chapter 19.28 RCW is exempt from licensing requirements under RCW 19.28.091, certification requirements under RCW 19.28.161, and inspection and permitting requirements under RCW 19.28.101. This exemption does not include work providing electrical feeds into the power distribution unit or installation of conduits and raceways. This exemption covers only those factory engineers or third-party service companies with equivalent training who are qualified to perform such service.

((24)) (25) Coincidental electrical/plumbing work. See RCW 19.28.091(8) for the plumber exemption.

((25)) (26) Nothing in this section will alter or amend any other exemptions from or requirement for licensure or inspection, chapter 19.28 RCW or this chapter.

Photovoltaic equipment.

((26)) (27) See WAC 296-46B-690 for specific exemptions related to photovoltaic installations.

AMENDATORY SECTION (Amending WSR 13-03-128, filed 1/22/13, effective 3/1/13)

WAC 296-46B-935 Administrator certificate. General.

(1) The department will deny application, renewal, change of assignment, or reinstatement of ((a)) an administrator or master electrician certificate if an individual owes money as a result of an outstanding final judgment(s) to the department.

(2) For special accommodation see WAC 296-46B-960.

(3) An applicant will not be issued a specialty administrator certificate that is a subspecialty of a certificate the applicant currently holds (i.e., the applicant is not eligible to take the domestic well administrator examination if the applicant currently possesses a pump and irrigation administrator certificate).

Qualifying for examination.

(4) There are no qualification requirements for taking an administrator certificate examination. Applicants should contact the testing agency directly.

Original - Administrator certificates.

(5) The scope of work for electrical administrators is described in WAC 296-46B-920. The department will issue an original administrator certificate to a general administrator, or specialty administrator who:

(a) Successfully completes the appropriate administrator examination; and

(b) Submits the appropriate examination passing report from the testing agency with the applicant's: Date of birth, mailing address, and Social Security number; and

(c) Pays all appropriate fees as listed in WAC 296-46B-909.

For an examination report to be considered, all the above must be submitted within ninety days after the completion of the examination. After ninety days, the applicant will be required to successfully retake the complete examination. An individual's original administrator certificate will expire on their birth date at least one year, and not more than three years, from the date of original issue.

Combination - Specialty administrator certificate.

(6) The department may issue a combination specialty administrator certificate to an individual who qualifies for more than one specialty administrators' certificate. The combination specialty administrators' certificate will plainly indicate the specialty administrator's certificate(s) the holder has qualified for. Telecommunications cannot be issued a combination because the renewal requirements are different from those required for electrical administrators.

Renewal - Administrator certificate.

(7) An individual must apply for renewal of their administrator certificate on or before the expiration date of the certificate. The individual may not apply for renewal more than ninety days prior to the expiration date. Renewed certificates are valid for three years, with the exception of telecommunications administrators, who will be renewed for two years.

(8) An individual may renew their administrator certificate within ninety days after the expiration date without reexamination if the individual pays the late renewal fee listed in WAC 296-46B-909.

(9) All renewals received more than ninety days after the expiration date of the certificate will be denied. The administrator will be required to pass the appropriate administrator examination before being recertified.

(10) All applicants for certificate renewal must:

(a) Submit a complete renewal application;

(b) Pay all appropriate fees as listed in WAC 296-46B-909; and

(c) Provide accurate evidence on the renewal form that the individual has completed the continuing education requirements described in WAC 296-46B-970. If an individual files inaccurate or false evidence of continuing education

information when renewing a certificate, the individual's certificate may be suspended or revoked.

Telecommunications administrators are not required to provide continuing education information.

Continuing education for pump and irrigation **(03)** and domestic pump **(03A)** administrators may be comprised of fifty percent electrical and fifty percent plumbing instruction.

(11) An individual who has not completed the required hours of continuing education can renew an administrator's certificate if the individual applies for renewal on or before the certificate expires and pays the appropriate renewal fee. However, the certificate will be placed in an inactive status.

When the certificate is placed in inactive status, an assigned administrator will be automatically unassigned from the electrical contractor. The electrical contractor will be notified of the unassignment and has ninety days to replace the administrator. An assignment fee will then be required per WAC 296-46B-909.

The inactive certificate will be returned to current status upon validation, by the department, of the required continuing education requirements. If the certificate renewal date occurs during the inactive period, the certificate must be renewed on or before the renewal date to allow the return to current status.

(12) An individual may renew a suspended administrator's certificate by submitting a complete renewal application including obtaining and submitting the continuing education required for renewal. However, the certificate will remain in a suspended status for the duration of the suspension period.

(13) An individual may not renew a revoked administrator's certificate.

AMENDATORY SECTION (Amending WSR 13-03-128, filed 1/22/13, effective 3/1/13)

WAC 296-46B-940 Electrician/certificate of competency required.

General.

(1) The department will deny application, renewal, or reinstatement of a certificate or permit if an individual owes money as a result of an outstanding final judgment(s) to the department.

(2) The scope of work for electricians is described in WAC 296-46B-920.

Electrician - Certificate of competency required.

(3) To work in the electrical construction trade, an individual must possess, wear, and visibly display on the front of the upper body, a current valid:

(a) Master **((journeyman))** **journey level** electrician certificate of competency issued by the department;

(b) **((Journeyman))** **journey level** electrician certificate of competency issued by the department;

(c) Master specialty electrician certificate of competency issued by the department;

(d) Specialty electrician certificate of competency issued by the department; or

(e) Electrical training certificate, learning the trade in the proper ratio, per RCW 19.28.161, under the supervision of a certified master **((journeyman))** **journey level** electrician,

((journeyman)) journey level electrician, master specialty electrician working in their specialty, or specialty electrician working in their specialty.

The certificate may be worn inside the outer layer of clothing when outer protective clothing (e.g., rain gear when outside in the rain, arc flash, welding gear, etc.) is required. The certificate must be worn inside the protective clothing so that when the protective clothing is removed, the certificate is visible. A cold weather jacket or similar apparel is not protective clothing.

The certificate may be worn inside the outer layer of clothing when working in an attic or crawl space or when operating equipment (e.g., drill motor, conduit threading machine, etc.) where wearing the certificate may pose an unsafe condition for the individual.

The certificate must be immediately available for examination at all times.

When working as a certified electrician, the electrician must not display a training certificate.

When supervising a trainee(s), the supervising electrician's certificate must be appropriate for the work being performed by the trainee(s).

Any person working as an electrician or trainee must also possess a government issued photo identification and immediately present that identification when requested by the inspector.

(4) The department issues master electrician and electrician certificates of competency in the following areas of electrical work:

- (a) General ((journeyman)) journey level (01);
- (b) Specialties:
 - (i) Residential (02);
 - (ii) Pump and irrigation (03);
 - (iii) Domestic pump (03A);
 - (iv) Signs (04);
 - (v) Limited energy system (06);
 - (vi) HVAC/refrigeration (06A);
 - (vii) HVAC/refrigeration - Restricted (06B);
 - (viii) Nonresidential maintenance (07);
 - (ix) Nonresidential lighting maintenance and lighting retrofit (07A);
 - (x) Residential maintenance (07B);
 - (xi) Restricted nonresidential maintenance (07C);
 - (xii) Appliance repair (07D);
 - (xiii) Equipment repair (07E); and
 - (xiv) Door, gate, and similar systems (10).

Original certificates of competency.

(5) The department will issue an original certificate of competency to master, ((journeyman)) journey level, or specialty electricians who meet the eligibility requirements listed in:

(a) RCW 19.28.191 (1)(a) or (b) and chapter 19.28 RCW; and

(i) Submit an application for an original master electrician certificate including: Date of birth, mailing address and Social Security number; and

(ii) Pay all appropriate fees, as listed in WAC 296-46B-909;

(b) RCW 19.28.191 (1)(d) and (e);

(i) Submit an original master electrician certification examination application including: Date of birth, mailing address and Social Security number; and

(ii) Pay all appropriate fees, as listed in WAC 296-46B-909; or

(c) RCW 19.28.191 (1)(f) through (g);

(i) Submit an original electrician certification examination application including: Date of birth, mailing address and Social Security number; and

(ii) Pay all appropriate fees, as listed in WAC 296-46B-909.

(6) An individual's original electrician certificate of competency will expire on their birth date at least two years, and not more than three years, from the date of original issue.

Renewal - Master electrician, ((journeyman)) journey level, and specialty electrician certificates of competency.

(7) An individual must apply for renewal of their electrician certificate of competency on or before the expiration date of the certificate. The individual may not apply for renewal more than ninety days prior to the expiration date. Renewed certificates are valid for three years.

(8) An individual may renew their certificate of competency within ninety days after the expiration date without reexamination if the individual pays the late renewal fee listed in WAC 296-46B-909.

(9) All applications for renewal received more than ninety days after the expiration date of the certificate of competency require that the electrician pass the appropriate competency examination before being recertified.

(10) All applicants for certificate of competency renewal must:

- (a) Submit a complete renewal application;
- (b) Pay all appropriate fees; and

(c) Provide accurate evidence on the renewal form that the individual has completed the continuing education requirements described in WAC 296-46B-970. Continuing education classes are only valid when all the requirements of WAC 296-46B-970 are completed. If an individual files inaccurate or false evidence of continuing education information when renewing a certificate of competency, the individual's certificate of competency may be suspended or revoked.

Continuing education for pump and irrigation (03) and domestic pump (03A) electricians may be comprised of fifty percent electrical and fifty percent plumbing instruction.

(11) An individual who has not completed the required hours of continuing education can renew a certificate of competency if the individual applies for renewal before the certificate of competency expires and pays the appropriate renewal fee. However, the certificate of competency will be placed in an inactive status. The inactive certificate of competency will be returned to current status upon validation, by the department, of the required continuing education. If the certificate renewal date occurs during the inactive period, the certificate must be renewed on or before the renewal date to allow the return to current status.

(12) An individual may renew a suspended certificate of competency by submitting a complete renewal application including obtaining and submitting the continuing education

required for renewal. However, the certificate will remain in a suspended status for the duration of the suspension period.

(13) An individual may not renew a revoked certificate of competency.

Exemptions - ((Linemen)) Lineworker.

(14) When performing the work described and allowed in WAC 296-46B-925 (17)(a) or (b)(i), when employed by the serving utility or its contractor or subcontractor(s), a ((lineman)) lineworker is exempt from the requirements of chapter 19.28 RCW.

(15) When performing the work described and allowed in WAC 296-46B-925 (17)(b)(ii) or (c), when employed by the serving utility or its licensed electrical contractor or subcontractor(s), a ((lineman)) lineworker must meet the requirements of RCW 19.28.261 (5)(b) or be an appropriately certified electrician. See the definition of a ((lineman)) lineworker in WAC 296-46B-100.

Exemptions - Plumbers.

(16) Coincidental electrical/plumbing work. See RCW 19.28.091(8) for the plumber exemption.

AMENDATORY SECTION (Amending WSR 13-03-128, filed 1/22/13, effective 3/1/13)

WAC 296-46B-942 Training certificate required.

General.

(1) To work in the electrical construction trade as an electrical trainee, an individual must possess, wear, and visibly display a current valid electrical training certificate, learning the trade in the proper ratio, per RCW 19.28.161, under the supervision of a certified master ((journeyman)) journey level electrician, ((journeyman)) journey level electrician, master specialty electrician working in their specialty, or specialty electrician working in their specialty.

The trainee must meet all the requirements of WAC 296-46B-940 related to visibly displaying a current certificate and having a valid photo identification on his/her person.

(2) A training certificate is required for all individuals throughout the individual's enrollment and matriculation in an approved construction electrician training school program described in RCW 19.28.191. A training certificate is required to work in the electrical construction trade if an individual does not:

(a) Possess a current ((journeyman)) journey level certificate of competency issued by the department;

(b) Possess a current specialty electrician certificate of competency issued by the department while working in that specialty's scope of work; or

(c) Is not working in exempt status as allowed by chapter 19.28 RCW.

(3) Trainees who have had their training certificates revoked or suspended (during the duration of the revocation or suspension) will not be issued a training certificate.

Original training certificates.

(4) The department will issue an original training certificate when the trainee applicant submits a complete training certificate application including:

(a) Date of birth, mailing address, Social Security number; and

(b) All appropriate fees as listed in WAC 296-46B-909.

All applicants for an electrical training certificate must be at least sixteen years of age. The original training certificate will be valid for two years. ((+))) If an individual has previously held an electrical training certificate, then that individual is not eligible for a subsequent original training certificate.

Specialty specific - Zero percent and seventy-five percent supervision modified training certificates.

(5) For specialties as allowed in Table 945-1 (i.e., specialties with seven hundred twenty minimum hours of work experience required to be eligible for examination):

(a) The department will approve the trainee to take the appropriate specialty competency examination necessary to qualify for a zero percent supervision modified training certificate. To qualify, the trainee applicant must submit a complete zero percent supervision modified training certificate application including:

(i) Date of birth, mailing address, Social Security number;

(ii) Affidavit of experience fulfilling the minimum work experience hours required to qualify for the specialty examination described in Table 945-1; and

(iii) All appropriate fees as listed in WAC 296-46B-909.

Upon successful completion of the appropriate examination, the trainee will be issued a nonrenewable zero percent supervision modified training certificate for the appropriate specialty. The zero percent supervision modified training certificate will be restricted in duration to the time allowed in Table 945-1, note 2.

(b) Prior to the expiration of the zero percent supervision modified training certificate, the individual must submit a complete application for a seventy-five percent supervision modified training certificate for the appropriate specialty including:

(i) Seventy-five percent supervision training certificate application including: Date of birth, mailing address, Social Security number; and

(ii) All appropriate fees as listed in WAC 296-46B-909.

(c) A trainee may possess multiple (i.e., in different specialties) modified supervision training certificates for specialties where reduced supervision is allowed in Table 945-1. Combination training certificates will not be issued.

Renewal of training certificates.

(6) An individual must apply for renewal of their training certificate on or before the expiration date of the certificate. The individual may not apply for renewal more than ninety days prior to the expiration date. Renewed certificates are valid for two years.

(7) An individual may renew their training certificate after the expiration date if the individual pays the late renewal fee listed in WAC 296-46B-909.

(8) All applicants for training certificate renewal must:

- (a) Submit a complete renewal application;
- (b) Pay all appropriate fees; and

(c) Provide accurate evidence on the renewal form that the individual has completed the continuing education requirements described in WAC 296-46B-970. Basic trainee classes are only valid when all the requirements of WAC 296-46B-970 are completed. If an individual files inaccurate or false evidence of basic trainee class information when renewing a training certificate, the individual's training certificate may be suspended.

~~((Basic trainee classes for trainees seeking pump and irrigation (03) and domestic pump (03A) experience credit may be comprised of fifty percent electrical and fifty percent plumbing instruction.))~~

(d) Within thirty days after renewing an electrical training certificate, the individual, if not enrolled in a department approved apprenticeship program, must submit a completed, signed, and notarized affidavit(s) of experience for all hours of experience gained since the individual's last training certificate was effective.

Employers are required to provide the necessary documentation and signed affidavit of experience to the trainee within twenty days after the trainee requests the affidavit. See WAC 296-46B-942(12). See WAC 296-46B-985(4) for the penalty for providing a false or inaccurate affidavit of experience. If the individual is enrolled in a department approved apprenticeship program, the program may submit the required affidavit(s) of experience upon the individual's completion of the required experience hours without cost to the individual. The affidavit of experience must accurately attest to:

- (i) The electrical installation work performed for each employer the individual worked for in the electrical trade during the previous period;
- (ii) The correct electrical category the individual worked in; and
- (iii) The actual number of hours worked in each category under the proper supervision of a Washington certified, master ((journeyman)) journey level electrician, ((journeyman)) journey level electrician or appropriate master specialty electrician or specialty electrician under that specific training certificate. If a trainee possesses multiple training certificates, an affidavit must be submitted for each training certificate for the hours worked under that specific training certificate.

If the individual is enrolled in a department approved apprenticeship program, the program may submit the required affidavit(s) of experience upon the individual's completion of the required experience hours without cost to the individual.

(9) An individual who has not completed the required hours of basic trainee class education can renew a training certificate if the individual applies for renewal before the training certificate expires and pays the appropriate renewal fee. However, the training certificate will be placed in an inactive status. The inactive training certificate will be

returned to current status upon validation, by the department, of the required basic trainee class education.

(10) An individual may renew a suspended training certificate by submitting a complete renewal application including obtaining and submitting the basic trainee class education required for renewal. However, the certificate will remain in a suspended status for the duration of the suspension period.

(11) An individual will not be issued a renewed or reinstated training certificate if the individual owes the department money as a result of an outstanding final judgment.

(12) The individual should ask each employer and/or apprenticeship training director for an accurately completed, signed, and notarized affidavit of experience for the previous certification period. The employer(s) or apprenticeship training director(s) must provide the previous period's affidavit of experience to the individual within twenty days of the request. If an individual is enrolled in an approved electrical construction trade apprenticeship program under chapter 49.04 RCW when the individual renews an electrical training certificate, the individual and their apprenticeship training director and/or each employer must give the department an accurately completed, signed, and notarized affidavit of experience accurately attesting to:

(a) The electrical installation work the individual performed in the electrical trade during the previous certification period;

(b) The correct electrical category the individual worked in; and

(c) The actual number of hours worked in each category under the proper supervision of a Washington certified master ((journeyman)) journey level electrician, ((journeyman)) journey level electrician or appropriate master specialty or specialty electrician for each employer. For apprentices enrolled in a registered apprenticeship program, the applicant and the training director are the only authorized signatures the department will accept on affidavits of experience.

(13) The individual and their employer(s) and/or apprenticeship training director(s) must sign and have notarized the affidavit of experience attesting to the accuracy of all information contained in the affidavit.

(14) The trainee, supervising electrician, contractor, and assigned administrator or master electrician are responsible for ensuring compliance with subsection (13) of this section. See WAC 296-46B-985 and 296-46B-990 (3)(c) and (f) for information about failing to submit or submitting false/fraudulent documents. Falsifying documents may be considered perjury and might result in criminal prosecution, civil penalty, or certificate revocation or suspension.

Trainees without supervision present on the job site.

(15) When the supervising electrician is found to not be present on the job site, the trainee ((will)) may be given a form by the inspector that must be fully completed and returned or postmarked within twenty-four hours to the inspector. The supervising electrician must sign the statement for the trainee if appropriate supervision was provided. If the supervising electrician fails or refuses to assist the trainee in completing the form, the trainee must return the form with a signed and dated statement stating the supervising electri-

cian's name and saying that the supervising electrician refused to assist.

Trainees seeking a ((journeyman)) journey level electrician certificate - Working with no supervision.

(16) Trainee seeking a general (01) ((journeyman)) journey level electrician certificate of competency. After review by the department, a trainee may be issued a six-month, non-renewable unsupervised electrical training certificate that will allow the individual to work without supervision if the trainee:

- (a) Has submitted a complete application for an unsupervised electrical training certificate;
- (b) Has worked over seven thousand hours properly supervised not to include more than four thousand of specialty experience;
- (c) Has successfully completed or is currently enrolled in an approved apprenticeship program or an electrical construction trade program in a school approved by the board of community and technical colleges;
- (d) Has paid all appropriate training certificate fees listed in WAC 296-46B-909; and
- (e) Is currently working for and continues to work for a licensed electrical contractor that employs at least one certified ((journeyman)) journey level or specialty electrician in the appropriate specialty.

Trainees seeking certain specialty electrician certificates - Working with reduced or no supervision.

(17) After review by the department, a trainee may be issued a nonrenewable zero percent supervision training certificate that will allow the individual to work without supervision if the trainee meets the requirements in subsection (4) of this section.

(18) Electrical trainees may work unsupervised when installing HVAC/R thermostat cable when the HVAC/R system consists of a single thermostat in one- and two-family dwelling units where line voltage power has not been connected to the dwelling's electrical system.

AMENDATORY SECTION (Amending WSR 13-03-128, filed 1/22/13, effective 3/1/13)

WAC 296-46B-945 Qualifying for master, ((journeyman)) journey level, specialty electrician examinations.

(1) General.

- (a) All applicants must be at least sixteen years of age.
- (b) All applicants, from in or out of state, must demonstrate the completion of basic trainee classes described in WAC 296-46B-970 (4)(c)(ii)(D).
 - (i) Twenty-four hours where two thousand or more; but less than four thousand hours of work experience is required.
 - (ii) Forty-eight hours where four thousand or more; but less than six thousand hours of work experience is required.
 - (iii) Seventy-two hours where six thousand or more; but less than eight thousand hours of work experience is required.
 - (iv) Ninety-six hours where eight thousand or more of work experience is required.

Qualifying for the master electrician examination.

(2) An individual may take the master electrician's certificate of competency examination if the individual meets the requirements described in RCW 19.28.191 (1)(d) or (e).

Qualifying for the master electrician examination from out-of-state.

(3) No credit may be applied from out-of-state toward qualifying for a master electrician certificate of competency examination.

Qualifying for the ((journeyman)) journey level electrician competency examination.

(4) An individual may take the ((journeyman)) journey level electrician's certificate of competency examination if the individual held a current electrical training certificate and has worked for an employer who employs at least one certified master electrician, ((journeyman)) journey level, or specialty electrician on staff and the individual:

(a) Has been employed, in the electrical construction trade, under the direct supervision of a master electrician, ((journeyman)) journey level electrician or specialty electrician working in the appropriate specialty in the proper ratio, per RCW 19.28.161, for four years (eight thousand hours). Of the eight thousand hours:

(i) At least two years (four thousand hours) must be in new industrial and/or new commercial electrical installation (excluding all work described for specialty electricians or technicians) under the direct supervision of a master ((journeyman)) journey level electrician or ((journeyman)) journey level electrician while working for a general electrical contractor; and

(ii) Not more than a total of two years (four thousand hours) may be for work described as an electrical specialty in WAC 296-46B-920(2).

(b) Has completed a four-year apprenticeship program in the electrical construction trade that is registered with the state apprenticeship council while working under the direct supervision of a master ((journeyman)) journey level or ((journeyman)) journey level electrician in the proper ratio, per RCW 19.28.161; or

(c) Has completed a two-year electrical construction training program as described in RCW 19.28.191 for ((journeyman)) journey level electricians, and two years (four thousand hours) of work experience in new industrial and/or new commercial electrical installations (excluding work described for specialty electricians or electrical technicians) under the direct supervision of a ((journeyman)) journey level electrician while working for a general electrical contractor in the proper ratio, per RCW 19.28.161. See WAC 296-46B-971 for additional training school information.

Electrical construction training hours gained in specialties requiring less than two years (i.e., four thousand hours) will not be credited towards qualification for ((journeyman)) journey level electrician.

The trainee and their employer and/or apprenticeship training director must attest to the accuracy of all information contained on affidavits of experience and apprenticeship

graduation certificates used to verify eligibility for the examination.

Qualifying for a specialty electrician certificate of competency or examination.

(5) After review and approval by the department, an individual may qualify for a specialty electrician's examination and certificate of competency if the individual held a current

electrical training certificate, and has worked for an employer who employs at least one certified master ((journeyman)) journey level electrician, ((journeyman)) journey level electrician, appropriate master specialty electrician, or appropriate specialty electrician on staff and the individual:

(a) Has been employed, in the electrical construction trade, under the direct supervision of an appropriate electrician in the appropriate specialty as follows:

Table 945-1 Experience Hours

Specialty	Minimum Hours of Work Experience Required to be Eligible for Examination ⁽⁴⁾⁽⁵⁾	Minimum Hours of Work Experience Required for Certification
Residential certificate (02)	4,000 ⁽³⁾	4,000
Pump and irrigation certificate (03)	4,000 ⁽³⁾	4,000
Domestic pump certificate (03A)	720 ⁽¹⁾⁽²⁾	2,000 ⁽⁶⁾
Signs certificate (04)	4,000 ⁽³⁾	4,000
Limited energy system certificate (06)	4,000 ⁽³⁾	4,000
HVAC/refrigeration system certificate (06A)	4,000 ⁽³⁾	4,000 ⁽⁷⁾
HVAC/refrigeration – Restricted (06B)	1,000 ⁽¹⁾⁽²⁾	2,000 ⁽⁶⁾
Nonresidential maintenance certificate (07)	4,000 ⁽³⁾	4,000
Nonresidential lighting maintenance and lighting retrofit certificate (07A)	720 ⁽¹⁾⁽²⁾	2,000 ⁽⁶⁾
Residential maintenance certificate (07B)	720 ⁽¹⁾⁽²⁾	2,000 ⁽⁶⁾
Restricted nonresidential maintenance certificate (07C)	1,000 ⁽¹⁾⁽²⁾	2,000 ⁽⁶⁾
Appliance repair certificate (07D)	720 ⁽¹⁾⁽²⁾	2,000 ⁽⁶⁾
Equipment repair certificate (07E)	1,000 ⁽¹⁾⁽²⁾	2,000 ⁽⁶⁾
Door, gate, and similar systems certificate (10)	720 ⁽¹⁾⁽²⁾	2,000 ⁽⁶⁾

Notes:

(1) Until the examination is successfully completed, the trainee must work under one hundred percent supervision. Once the appropriate examination is successfully completed, the modified supervision trainee may work under zero percent supervision.

(2) The trainee may have only one zero percent supervision certificate in a specialty (valid for no more than two years). If the trainee has not gained the required work experience by the time the zero percent supervision certificate has expired, the trainee must get a seventy-five percent supervision certificate and work under supervision until all required work experience hours are gained and credited towards the minimum work experience requirement.

(3) This specialty is not eligible for unsupervised trainee status as allowed in chapter 19.28 RCW.

(4) The trainee and their employer and/or apprenticeship training director must attest to the accuracy of all information contained on affidavits of experience used to verify eligibility for the examination.

(5) Neither previous work experience credit nor training school credit is allowed as a substitute for the initial hours of minimum work experience required to be eligible for examination unless the trainee's work experience hours under direct supervision are provided as required in RCW 19.28.191 (1)(g)(ii).

(6) Electrical construction training hours gained in specialties requiring ((less than two years)) two thousand hours or less for certification ((may)) will not be credited towards qualification for ((journeyman)) journey level electrician or any of the four thousand hour specialties, except as allowed by (7) below.

(7) The two thousand minimum hours of work experience required for certification as an HVAC/refrigeration-restricted (06B) specialty electrician may be credited as two thousand hours towards the four thousand minimum hours of work experience required for certification as an HVAC/refrigeration (06A) specialty electrician. Hours of work experience credited from the HVAC/refrigeration-restricted (06B) specialty cannot be credited towards qualification for taking the general electrician (01) examination or minimum work experience requirements.

(8) Experience hours may be coincidentally credited towards qualifying for electrician and plumber certifications. See RCW 19.28.191 (1)(g)(iv).

(b) Or has completed an appropriate two-year apprenticeship program in the electrical construction trade that is registered with the state apprenticeship council while working under the direct supervision of an electrician in the appropriate specialty in the proper ratio, per RCW 19.28.161.

Qualifying for a certificate of competency when the Washington electrical work experience is exempt from certification requirements in RCW 19.28.261.

(6) After review and approval by the department, an individual may be granted work experience credit to take the ((journeyman/specialty)) journey level/specialty electrician's competency examination when an original notarized letter of work experience accompanied by verifiable documentation is provided. - See subsection (7) of this section.

For the purposes of this section, exempt work does not include work performed on property owned, in whole or part, by the individual seeking credit.

All exempt individuals must have a valid electrical training certificate when working to gain electrical work experience.

Work experience requested by an individual for telecommunications work must be gained while working for **(01)** general electrical, **(02)** residential, or **(06)** limited energy system electrical contractors as allowed by those scopes of work. When the work was performed, the individual must have a valid training certificate, be under the supervision of an appropriately certified ((journeyman)) journey level, residential or limited energy electrician, and be in compliance with RCW 19.28.191.

General - Qualifying hours gained by applicants seeking work experience credit without a Washington electrician training certificate.

(7) The type of on-the-job work experience must be similar to the credit being applied for and lawfully gained in the state or other entity where the work was performed. The individual must submit verifiable documentation (e.g., payroll, time sheets, permits, supervision, etc.) that the department may use to ascertain the type of work performed and the number of hours worked for each type (i.e., specialty) of work.

Training hours credited for specialties requiring less than two years (i.e., four thousand hours) may not be credited towards qualification for general ((journeyman)) journey level electrician.

The documentation must include a complete description of the individual's usual duties with percentages attributed to each type (e.g., wiring, material handling, shop, low voltage, etc.)

The department may reduce the number of hours allowed if the:

- (a) Individual did not have supervision during the training period;
- (b) Training hours are not related to electrical construction;
- (c) Training hours are not related to the specialty being applied for;
- (d) Documentation submitted by the individual does not fully verify the requested work experience; or
- (e) Work credit was not lawfully gained.

Training school credit.

(8) No more than fifty percent of the minimum work experience needed to qualify for specialty electrician certification is allowed for any training school program (e.g., a spe-

cialty requiring two thousand hours of minimum required work experience may receive no more than one thousand hours credit from an electrical construction training program).

See RCW 19.28.191 (1)(h) for training school credit allowed for ((journeyman)) journey level applicants.

See WAC 296-46B-971 for additional information on training schools.

Qualifying for the ((journeyman/specialty)) journey level/specialty electrician competency examination when work was performed in a state requiring electrician certification.

(9) After review and approval by the department, an individual may be granted on-the-job work experience towards qualifying to take the ((journeyman/specialty)) journey level/specialty electrician's competency examination for hours worked in the other state when the state certifies to the department:

(a) The type and number of hours of work performed within the state. Credit will not be allowed for work not done within the certifying state.

(b) That the work was legally performed under the other state's licensing and certification requirements; and

(c) The other state's certificate of competency was obtained by examination.

If the experience is for other than a new commercial or industrial installation, the individual must identify the specialty credit desired and provide verifiable documentation identifying the other state's allowed scope of work for the specialty, see subsection (7) of this section.

Qualifying for the ((journeyman/specialty)) journey level/specialty electrician competency examination when work was performed in a state that does not require electrician certification.

(10) After review and approval by the department, an individual may be granted work experience credit to take the ((journeyman/specialty)) journey level/specialty electrician's competency examination when an original notarized letter of work experience accompanied by documentation, see subsection (7) of this section, that can be used to verify the individual has worked the hours being requested is provided by:

- (a) An appropriately state licensed electrical contractor;
- (b) Registered apprenticeship training director;
- (c) Nationally recognized contractor/labor organization;

or

- (d) The individual's lawful employer.

Military/shipyard experience.

(11) After review and approval by the department, an individual who has worked in the electrical construction trade performing work described in WAC 296-46B-920 while serving in the armed forces of the United States may be eligible to take the examination for the certificate of competency as a ((journeyman)) journey level or specialty electrician. Credit may be allowed for hours worked or training received.

If an individual has military experience in a specialized electrical field (e.g., rating) that is similar to a specialty electrician category listed in WAC 296-46B-920, credit may be

allowed toward the appropriate specialty certificate. Nuclear, marine, shipyard, shipboard, radar, weapons, aeronautical experience, or similar experience may be acceptable for no more than fifty percent of the minimum required work experience for qualifying for electrician examination.

The department will evaluate and determine whether the submitted experience is related specifically to the electrical construction/maintenance trade regulated by chapter 19.28 RCW.

Experience in another country.

(12) After review and approval by the department, and if an individual has a ((journeyman)) journey level electrician certificate from a country outside the United States that requires that at least four years of electrical construction training and certification is obtained by examination, the individual may be eligible for four thousand hours of the specialty credit allowed towards the qualification to take the Washington ((journeyman)) journey level electrician examination.

No more than two years of the required training to become a Washington ((journeyman)) journey level electrician may be for work described for specialty electricians or technicians in WAC 296-46B-920. In addition to the maximum of four thousand hours credit that may be allowed by this subsection, an additional four thousand hours of new commercial/industrial experience must be obtained using a training certificate in the state while under the supervision of a master ((journeyman)) journey level electrician or ((journeyman)) journey level electrician.

Documentation substantiating the individual's out of country experience must be submitted in English.

(13) Out of country experience credit is not allowed toward a specialty electrician certificate.

AMENDATORY SECTION (Amending WSR 13-03-128, filed 1/22/13, effective 3/1/13)

WAC 296-46B-960 Administrator and electrician certificate of competency examinations. General.

(1) The minimum passing score on any examination or examination section is seventy percent. If examination is requested to be administered by the department, an application is required and the examination must be successfully completed within one year of application or the individual must submit a new application for exam including all appropriate fees.

(2) All examinations are open book.

(a) Candidates may use:

(i) Any original copyrighted material;

(ii) A silent, nonprinting, nonprogrammable calculator that is not designed for preprogrammed electrical calculations;

(iii) Copies of chapter 19.28 RCW and this chapter; or

(iv) A foreign language dictionary that does not contain definitions.

(b) Candidates may not use:

(i) Copies of copyrighted material;

(ii) Copies of internet publications, except for RCWs or WACs;

(iii) Personal notes; or

(iv) A personal computing device of any type other than the calculator in (a)(ii) of this subsection.

(3) Administrator, master electrician, and electrician examinations may consist of multiple sections. For all administrator examinations, all sections must be successfully completed within a one-year examination period after beginning the examination. For all master electrician and electrician examinations, all sections must be successfully completed within a one-year examination period beginning with the date of the examination approval. Within the one-year examination period, the candidate does not have to retake any sections successfully completed within the examination period. If all sections are not successfully completed within the one-year period, the candidate must begin a new examination period and retake all sections.

Special accommodations for examination.

(4) An applicant for an examination who, due to a specific physical, mental, or sensory impairment, requires special accommodation in examination procedures, may submit a written request to the chief electrical inspector for the specific accommodation needed.

(a) The applicant must also submit to the department a signed and notarized release, authorizing the specifically identified physician or other specialist to discuss the matter with the department representative. The applicant must also submit an individualized written opinion from a physician or other appropriate specialist:

(i) Verifying the existence of a specific physical, mental, or sensory impairment;

(ii) Stating whether special accommodation is needed for a specific examination;

(iii) Stating what special accommodation is necessary; and

(iv) Stating if extra time for an examination is necessary and if so, how much time is required. The maximum allowance for extra time is double the normal time allowed.

(b) The written request for special accommodation and individualized written opinion must be submitted to the department at least six weeks in advance of the examination date and must be accompanied by a completed application and fees as described in WAC 296-46B-909.

(c) Only readers and interpreters provided from the administrative office of the courts and/or approved by the department may be used for reading or interpreting the examination. The applicant will be required to bear all costs associated with providing any reading or interpretive services used for an examination.

(d) Applicants who pass the examination with the assistance of a reader or interpreter will be issued a certificate with the following printed restriction: "Requires reading supervision for product usage." A competent reader or interpreter must be present on any job site where a person with this restriction is performing electrical work as described in chapter 19.28 RCW.

Applicants who pass the examination with the assistance of a mechanical device (e.g., magnifier, etc.) will be issued a certificate with the following printed restriction: "Requires mechanical reading assistance for product usage." Appropri-

ate mechanical reading assistance must be present on any job site where a person with this restriction is performing electrical work as described in chapter 19.28 RCW.

If a candidate successfully retakes the examination without the assistance of a reader or translator, a new certificate will be issued without the restriction.

(5) Applicants who wish to use a foreign language dictionary during an examination must obtain approval at the examination site prior to the examination. Only dictionaries without definitions will be approved for use.

Failed examination appeal procedures.

(6) Any candidate who takes an examination and does not pass the examination may request a review of the examination.

(a) The department will not modify examination results unless the candidate presents clear and convincing evidence of error in the grading of the examination.

(b) The department will not consider any challenge to examination grading unless the total of the potentially revised score would result in a passing score.

(7) The procedure for requesting an informal review of examination results is as follows:

(a) The request must be made in writing to the chief electrical inspector and must be received within twenty days of the date of the examination and must request a rescore of the examination. The written request must include the appropriate fees for examination review described in WAC 296-46B-909.

(b) The following procedures apply to a review of the results of the examination:

(i) The candidate will be allowed one hour to review their examination.

(ii) The candidate must identify the challenged questions of the examination and must state the specific reason(s) why the results should be modified with multiple published reference material supporting the candidate's position.

(iii) Within fifteen days of the candidate's review, the department will review the examination and candidate's justification and notify the candidate in writing of the department's decision.

Failing an administrator certificate exam or electrician certificate of competency examination.

(8) Anyone failing an administrator or electrician competency examination may retake the examination by making arrangements with the testing agency and paying the retesting fee.

(9) If the individual makes a failing score, the individual must wait two weeks before being eligible to retest.

(10) If the individual fails an electrician examination or a part of an administrator or master electrician examination three times within a one-year period, the individual must wait three months to retake the failed portion of the examination.

(11) Anyone failing an electrician competency examination may continue to work in the electrical trade if they have a valid electrical training certificate and work under the direct supervision of a certified ((journeyman)) journey level or specialty electrician in the proper ratio, per RCW 19.28.161.

Cheating on an examination.

(12) Anyone found cheating on an examination, attempting to bribe a proctor or other agent involved in administering an examination, or using inappropriate materials/equipment during an examination will be required to wait at least eleven months before being allowed to reexamine. All such reexaminations will be administered by the department in Tumwater, Washington and the candidate will be required to apply and schedule for the examination with the chief electrical inspector. The department may also file a civil penalty action under chapter 19.28 RCW.

Examination confidentiality.

(13) All examination questions are confidential. Examination candidates and persons who have taken an examination are not allowed to copy or otherwise make note of or share examination content, in any manner, outside the individual's examination environment. Examination candidates must agree, prior to beginning an examination, to keep all examination content confidential. The department may also file a civil penalty action under chapter 19.28 RCW.

AMENDATORY SECTION (Amending WSR 13-03-128, filed 1/22/13, effective 3/1/13)

WAC 296-46B-970 Continuing education and classroom education requirements. (1) **DEFINITIONS** - For purposes of this section.

"Applicant" means the entity submitting an application for review.

"Application" means a submittal made by an applicant seeking instructor or class approval.

"Calendar day" means each day of the week, including weekends and holidays.

"Class" means continuing education or basic trainee class.

"Currently adopted code," for this section means the code adopted in WAC 296-46B-010(1) or any more recently published National Electric Code.

"Date of notification" means the date of a request for additional information from the department or the approval/denial letter sent to the applicant by the department.

"Examination" is any examination required by this section. Each examination must be unique and must provide randomized questions, except for classroom training. Each examination question bank must be at least two times larger than the number of questions in any individual examination. Examinations must not direct or point the individual to a correct answer or reference. Individuals must be responsible to determine the correct answer without the assistance of the sponsor. No more than twenty percent of an examination's questions may have a true/false answer. Competency is demonstrated by scoring at least seventy-five percent on the examination.

"Individual" means a master electrician, administrator or electrician seeking credit for continuing education or a trainee seeking credit for basic trainee class for renewal or certification.

"Instructor" means an individual who is authorized to instruct an approved continuing education or basic trainee class.

"Working day" means Monday through Friday, excluding state of Washington holidays.

(2) GENERAL.

(a) The department and the electrical board have the right to monitor all approved classes without notice and at no charge.

If the department or electrical board determines that the class or instructor does not meet or exceed the minimum requirements for approval, course length, or instructor qualifications, the department may revoke the class and/or instructor approval and/or reduce the number of credited hours for the class.

(b) Department-offered classes and the instructors used for department classes are automatically approved.

(c) Instructors who meet the minimum requirements using subsection (5)(d)(iv) of this section may only instruct classes sponsored by the manufacturer(s) who verified the instructors' qualifications.

(d) An individual will not be given credit for the same approved continuing education class taken more than once. A course sponsor may not submit an individual's name on a roster(s) for multiple classes (i.e., multiple class numbers) when the classes are given simultaneously (e.g., code update, industry related, and/or basic trainee class that have similar class content given during the same class session). Credit will not be granted for a class that is not approved per this section.

(e) Electrical administrators, master electricians, and electricians:

(i) To be eligible for renewal of an administrator certificate, master electrician or electrician certificate of competency, the individual must have completed at least eight hours of approved continuing education for each year of the prior certification period. The individual is not required to take the classes in separate years.

(A) At least eight hours of the total required continuing education must be on the changes in the currently adopted code.

(B) Four hours of the required continuing education must be on the currently adopted chapter 19.28 RCW and/or its related WAC.

(ii) An individual changing an electrical administrator and an electrician certificate of competency into a master electrician's certificate of competency as allowed in RCW 19.28.191 (1)(a) or (b) must have completed at least eight hours of approved continuing education for each year of the electrician's prior certificate period. The individual is not required to take the classes in separate years.

(A) At least eight hours of the total required continuing education must be on the changes in the currently adopted code.

(B) Four hours of the required continuing education must be on the currently adopted chapter 19.28 RCW and/or its related WAC.

(iii) Any portion of a year of a prior administrator or electrician certificate period is equal to one year for the purposes of the required continuing education.

(iv) An individual who has both an electrician certificate and an administrator certification may use the same class to fulfill the requirements for continuing education.

(f) Training certificates: ((+)) To be eligible for renewal of a training certificate, the individual must have completed:

((A) At least thirty-two hours of approved basic trainee classes and effective July 1, 2013,)) (i) At least forty-eight hours of approved basic trainee classes. The individual cannot use a basic trainee class as credit for the continuing education requirements for renewing an electrician or administrator certificate(s) when the class is also used to satisfy the training certificate renewal requirements; or

((B)) (ii) Equivalent electrical training classes taken as a part of an approved:

- Apprenticeship program under chapter 49.04 RCW; or
- Electrical training program under RCW 19.28.191 (1)(h).

Equivalent classes must be submitted to and approved by the chief electrical inspector thirty calendar days prior to offering the class.

((ii) Only trainees seeking experience credit in the pump and irrigation (03) or domestic pumping (03A) specialties may receive credit for pumping industry basic trainee classes;

Trainees working in the pump and irrigation (03) or domestic pump (03A) specialties may be credited for courses approved as a part of the requirements for plumber trainees required in RCW 18.106.070(5).))

(g) A continuing or basic trainee class attended or completed by an individual before the class's effective date cannot be used to meet the certificate renewal/certification requirements.

(3) CLASS AND INSTRUCTOR - GENERAL APPROVAL PROCESS.

(a) The department will:

(i) Review the application for completeness and conformance with the requirements in this section.

(ii) If the application is incomplete, notify the applicant within seven working days of the status of the review and if additional information is required.

(iii) Complete the review and approval/denial process within fifteen working days upon receipt of a complete application or additional requested information.

(b) The department will deny approval of applications that do not meet the minimum requirements.

(c) All applications will be considered to be new applications (i.e., Classes and instructors may not be renewed. All applications must include all information necessary to show conformance with the minimum requirements).

(d) Application process:

(i) The applicant must submit a complete application to the department at least thirty calendar days prior to offering or instructing a class.

(ii) The department will only consider material included with the application when reviewing an application.

(iii) All applications must include:

(A) Applicant's name, address, contact name, e-mail address, and telephone number;

(B) All required fees;

(e) Review process:

(i) When the application is received:

(A) The department must review the application for completeness within seven working days after receipt.

(B) If the application is incomplete, the department must, within two working days, notify the applicant of the status of the review and what additional information is required.

• The applicant must provide any additional information requested by the department within five working days after the date of notification.

• The department will deny the application if the additional required information is not received within the five working days after the date of notification for additional information.

(C) The department must complete the review and approval/denial process within fifteen working days upon receipt of a complete application or additional requested information and within two working days notify the applicant of the approval/denial in writing or electronically.

(ii) A notification of denial must include:

- (A) Applicant's name and telephone number;
- (B) Date of denial;
- (C) Sponsor's name and class title if applicable;
- (D) Instructor's name if applicable; and
- (E) The reason for denial.

(iii) A notification of approval:

(A) For classes must include:

- Applicant's name and telephone number;
- Sponsor's name and telephone number;
- Sponsor number;
- Class title;
- Class number;

• Number of hours approved for the class. The department may reduce the hours requested in the application if the review shows that the requested number of hours is excessive;

• Effective date for this class;

• Expiration date of class;

• Category for which the class is approved (i.e., code update, RCW/WAC update, industry related, basic trainee class, or pumping industry((, or pumping industry trainee class)));

• Type of class (i.e., classroom, correspondence, internet); and

• Whether the class is open to the public.

(B) For instructors, must include:

- Applicant's name and telephone number;
- Instructor's name and telephone number;
- Effective date for the approval; and
- Expiration date of the approval.

(iv) The applicant may request a review, by the electrical board, of the department's denial or modification of the application. The applicant must submit a written request for review to the Secretary of the Electrical Board - Chief Electrical Inspector - Within twenty days of notification of the denial/modification. The request must include a review fee of one hundred nine dollars and fifty cents. The review fee is nonrefundable.

(4) CLASS APPROVAL PROCESS.

(a) Class applications must include:

(i) Sponsor's name, address, contact name, e-mail address, telephone number, and sponsor's number (if a class was previously approved);

(ii) Class title;

(iii) Number of education hours requested for the class;

(iv) Category of class for which approval is sought (e.g., code update, RCW/WAC update, industry related, basic trainee class, or pumping industry((, or pumping industry basic trainee class)));

(v) Statement that all requirements of this section will be complied with;

(vi) Statement of whether the class is open to the public;

(vii) Class syllabus (e.g., presentation method(s), description of the training, specific NEC/RCW/WAC articles taught, theory subjects, time allowed for various subject matter components, examination question samples, etc.) describing how the class meets the minimum requirements, described below, for the type of class being offered;

(viii) The applicant must show that the sponsor regularly employs at least one staff member who meets the requirements for instructors in this section;

(ix) List of resources (e.g., texts, references, etc.);

(b) Class approval will be valid for three years except:

(i) If the class is "code update" and a new NEC is adopted by the department within the class approval period, the class approval will be considered automatically revoked; or

(ii) If the class is modified after the application is approved, the class approval will be considered automatically revoked (i.e., change in syllabus, hours, examination, etc.).

(c) Minimum requirements:

(i) Class length:

(A) The minimum allowed length of a class is two hours; however, the minimum length for a basic trainee class ((or pumping industry basic trainee class is eight)) is four hours that may be delivered in multiple classroom components of not less than two hours each.

(B) Class length must be based on two-hour increments (e.g., 2, 4, 6, 8, etc.)

(C) Class length must be based on the following:

• Classroom instruction will be based on the total hours the individual is in the classroom. A continuing education class may be divided into multiple components so long as each component is not less than two hours in length and all components are completed within a one-month period. A basic trainee class may be divided into multiple components so long as each component is not less than two hours in length and all components are completed within a two-month period.

• Distance learning continuing education classes (i.e., correspondence and internet continuing education classes) will be based on clock hours necessary to complete the class if it was presented in a classroom setting.

(ii) Class content:

(A) Industry-related classes must be based on:

• Codes or rules included in the currently adopted National Electrical Code (see definition of currently adopted), the electrical law/rule;

• Electrical theory based on currently published documents that are readily available for retail purchase; and/or

- Materials and methods that pertain to electrical construction, building management systems, electrical maintenance, or workplace electrical safety such as *NFPA 70E - Handbook for Electrical Safety in the Workplace*. First aid type classes must be approved and will be limited to four hours of credit towards the individual's total continuing education requirement.

(B) Code update classes must be based on the currently adopted (see definition) National Electrical Code and must specify the code articles to be addressed in the class presentation.

(C) RCW/WAC update classes must be based on the latest adopted versions of chapter 19.28 RCW and/or chapter 296-46B WAC.

(D) All basic trainee classes (~~(and pumping industry basic trainee classes)~~) must be classroom instruction only and based upon basic electrical theory, currently adopted (see definition for currently adopted) National Electrical Code, and/or use of the electrical laws or rules. Correspondence and internet classes are not allowed. All basic trainee classes must include an appropriate written competency examination(s) to ensure the participant mastered the basic concepts of the class. The examination must consist of at least five questions per two hours of class credit.

(E) For all pumping industry classes, curriculum must include fifty percent electrical and fifty percent plumbing instruction.

(F) The sponsor of any distance learning class (e.g., correspondence/internet continuing education) must provide the following additional information with the application:

- How the sponsor will provide an orientation session with the instructor or an affiliated representative of the sponsor.
- The application must include a complete description of any hardware, software, or other technology to be used by the provider and needed by the student to effectively engage in the delivery and completion of the class material.
- In the case of internet based continuing education classes, describe how the class software addresses automatic shutdown after a period of inactivity.
- How will the sponsor provide security to ensure that the student who receives credit for the class is the student who enrolled in and completed the class. The approved sponsor and the student must certify that the student has completed the class and the required number of clock hours.
- The application must describe the process and the acceptable methods of how students can contact approved instructors to answer questions regarding the class.
- The application must describe the consistent and regular interactive events appropriate to the delivery method. The interactive elements must be designed to promote student involvement in the learning process and must directly support the student's achievement of the class learning objectives.
- The application must demonstrate that the class includes the same or reasonably similar information content as a course that would otherwise qualify for the requisite number of clock hours of classroom-based instruction.
- The application must demonstrate how the sponsor determined the number of clock hours requested.

- The application must demonstrate how mastery of the material is evaluated (e.g., describing how the material is divided into major learning units and describing how these learning units are divided into modules of instruction, describing how the student's progress toward completion of the mastery requirement will be measured, and describing how the class will provide a mechanism of individual remediation to correct any deficiencies in each module of instruction).

(5) INSTRUCTOR APPROVAL PROCESS:

(a) Except first-aid training, all instructors must be approved per this section.

(b) The instructor application will include:

(i) Instructor's name, address, telephone number, e-mail address;

(ii) Copies of credentials or other information showing conformance with the instruction minimum qualifications.

(c) Instructor approval will be valid for three years except:

(i) If the instructor's credentials are invalidated (e.g., suspension or revocation by the issuing entity) for any reason, approval will be automatically revoked.

(ii) When the instructor approval expires or is revoked, a new application must be submitted to regain approved instructor status.

(d) Minimum requirements:

The application must show that the instructor meets one of the following:

(i) Has a valid Washington administrator, master electrician, or electrician's certificate and has appropriate knowledge of and experience working as an electrical/electronic trainer; or

(ii) Is currently an instructor in a two-year program in the electrical construction trade licensed by the Washington work force training and education coordinating board. The instructor's normal duties must include providing electrical/electronic education; or

(iii) Is a high school vocational teacher, community college, college, qualified instructor with a state of Washington approved electrical apprenticeship program, or university instructor. The instructor's normal duties must include providing electrical/electronic education; or

(iv) Works for and is approved by a manufacturer of electrical products to teach electrical continuing education; or

(v) Is an electrical engineer registered under chapter 18.43 RCW.

(6) FORMS:

(a) The department will develop an appropriate form(s) for the applicant's use when submitting for instructor or class approval;

(b) Applicants must use the department's form when submitting an application for review.

(7) CLASS ATTENDANCE:

(a) The department is not responsible for providing verification of an individual's continuing education or basic trainee classroom training history with the class sponsor;

(b) Electrical approved classes offered in Washington:

(i) The sponsor must provide the department with an accurate online course attendance/completion roster for each class given. Class attendance will only be verified based on

the online attendance/completion roster provided by the sponsor.

(A) Within seven days of a student completing the class, the course sponsor must provide the attendance/completion roster in an internet format provided by the department.

(B) The attendance/completion roster must show each individual's name, Washington certificate number, class number, and date of completion.

(ii) Individuals will not be granted credit for a class unless the sponsor's online attendance/completion roster shows the individual successfully completed the class.

(c) For classes approved under chapter 18.106 RCW for the pumping industry, a class number will be created for electrical continuing education. Sponsors for these classes must verify attendance for the electrical credit using the format described in subsection (b) of this section.

(8) Noncompliance with this section by a course sponsor or instructor.

(a) Before a course sponsor or instructor is revoked or suspended for noncompliance with this section, the course sponsor or instructor will be given written notice of the department's intention to suspend or revoke. The notification will describe the allegations and provide the necessary procedures to request a hearing before the electrical board as described in RCW 19.28.341.

(b) The department may also file a civil penalty action under chapter 19.28 RCW for fraudulent, inaccurate, or material misrepresentation activity.

AMENDATORY SECTION (Amending WSR 13-03-128, filed 1/22/13, effective 3/1/13)

WAC 296-46B-971 Training schools. (1) The department must evaluate and approve training school programs in the electrical trade as regulated by chapter 19.28 RCW for equivalency to hours of supervised work experience. Approved training programs must be from a Washington state public community or technical college, or a not-for-profit nationally accredited technical or trade school licensed by the work force training and education coordinating board under chapter 28C.10 RCW.

(2) The minimum total hours for an electrical technical training program must be determined per RCW 19.28.191.

(3) Training school programs must be approved before their graduates may request credit for equivalent work experience hours toward ((journeyman)) journey level or specialty electrician certification. Until December 31, 2003, existing electrical training programs, in effect after January 1, 2000, may apply for retroactive approval of their program to determine the number of hours that will be credited for the program graduates. After December 31, 2003, all training programs must be approved by the department prior to beginning instruction.

(4) Training schools must submit the curriculum of each ((journeyman)) journey level or specific specialty electrical training program to the department for approval. The curriculum must include a detailed description of each course that is included in the total training hours required by RCW 19.28.191. The curriculum must be reviewed by the department whenever significant changes in program content or

course length are implemented or at an interval not to exceed three years. After department review, the program may be renewed. In evaluating the relevance of the curriculum, the department will consider the following criteria:

(a) Scope of work for the appropriate electrician certification.

(b) Understanding whole systems related to and integrated with electrical equipment installation, maintenance, troubleshooting, and appliance repair (e.g., refrigeration, pumps, hydraulics, thermodynamics, compressed air, and similar systems).

(c) Courses not directly related to electrical technical instruction or specific scope of work, but required to complete the specific training program (i.e., mathematics, technical writing, business, safety, first aid, ergonomics, etc.), must not exceed ten percent of the total student/instructor contact time of the program.

(5) Within thirty days after beginning a program, the program sponsor must supply the department with a roster of individuals enrolled in the program. The roster must show each student's name, date of enrollment, Washington training or electrician certificate number, and the training program number. Within thirty days after each graduation cycle, approved training school programs must provide the department with a roster of individuals that have successfully completed the program. The roster must show each student's name, date of completion, Washington training or electrician certificate number, and the training program title. An individual must provide a copy of the certificate of completion or proof of graduation from the electrical training program when making application to the department for an electrician examination.

(6) All school training activities involving electrical work or appliance repair done outside of in-school lab facilities must be done under a valid Washington electrical contractor's license. All students performing such work must have a valid training certificate and work under a supervising ((journeyman)) journey level or specialty electrician in a ratio, per RCW 19.28.161, in compliance with RCW 19.28.-161.

(7) Individuals in a two-year electrical construction trade training program for ((journeyman)) journey level electrician must obtain the additional two years of work experience required in new industrial or commercial installation prior to the beginning, or after the completion, of the technical school program.

All student electrical training hours obtained when working for contractors or other employers in intern programs arranged by the school must be evaluated as part of the training program hours. Additional work experience credit gained in an intern program is not allowed.

This does not prohibit trainees in a training program for specialty electricians from having concurrent employment and obtaining additional specialty work experience while attending school. All such concurrent work must be documented in an affidavit of experience per WAC 296-46B-942(8).

The following supervision requirements must be met when working as an intern or student:

(a) Intern when working for contractors or other employers as a:

(i) General electrician, there must be not more than one noncertified individual for every certified master ((journeyman)) journey level electrician or ((journeyman)) journey level electrician.

(ii) Specialty electrician, there must be not more than two noncertified individuals for every certified master specialty electrician working in that electrician's specialty, specialty electrician working in that electrician's specialty, master ((journeyman)) journey level electrician, or ((journeyman)) journey level electrician.

(b) Student when working for a public community or technical college, or not-for-profit nationally accredited trade or technical school licensed by the work force training and education coordinating board under chapter 28C.10 RCW as a ((journeyman)) journey level or specialty electrician in the training program, the ratio requirements are one certified master specialty electrician working in that electrician's specialty, specialty electrician working in that electrician's specialty, master ((journeyman)) journey level electrician, or ((journeyman)) journey level electrician working as a specialty electrician to no more than four students enrolled in and working as part of an electrical construction program. All such work will be considered to be an integral part of the training program and work experience credit will not be allowed except as a part of the program.

When the ratio of certified electricians to noncertified individuals on a job site is one certified electrician to three or four noncertified individuals, the certified electrician must:

(i) Directly supervise and instruct the noncertified individuals and the certified electrician may not directly make or engage in an electrical installation; and

(ii) Be on the same job site as the noncertified individual for a minimum of one hundred percent of each working day.

The public community or technical colleges, or not-for-profit nationally accredited trade or technical schools must be an appropriately licensed electrical contractor when performing work outside the classroom.

(8) The department will use the criteria in this section to evaluate the hours of credit that may be allowed for United States armed forces experience and training in the electrical construction, electrical maintenance, and appliance repair trades. See WAC 296-46B-945.

AMENDATORY SECTION (Amending WSR 09-20-032, filed 9/29/09, effective 10/31/09)

WAC 296-46B-980 Enforcement—Installations, licensing, and certification requirements. (1) The department inspects the electrical worksites of individuals, employers, and employees with respect to the methods and installation requirements of chapter 19.28 RCW and this chapter. The department's electrical inspectors and electrical auditors make electrical work inspections. The department's electrical inspectors, electrical auditors, and compliance officers make electrical licensing/certification inspections.

(2) The department ensures that individuals, employers, and employees comply with the electrical licensing and certification requirements of chapter 19.28 RCW and this chapter.

To do this, inspections are made by the department's electrical inspectors/auditors and compliance officers.

Compliance officers or electrical inspectors/auditors determine whether:

(a) Each person or entity advertising to do electrical work or doing electrical work on an electrical worksite has a proper license or certificate;

(b) The ratio, per RCW 19.28.161, of certified ((journeyman/specialty)) journey level/specialty electricians to the certified trainees on the job site is correct; and

(c) Each certified trainee is directly supervised by an individual who possesses an appropriate certificate of competency for the type of electrical work being performed.

AMENDATORY SECTION (Amending WSR 13-03-128, filed 1/22/13, effective 3/1/13)

WAC 296-46B-990 Failure to comply with the electrical contractor licensing, administrator certification, or electrician certification laws. General.

(1) If the compliance officer or electrical inspector/auditor determines that an individual, employer, or employee has violated chapter 19.28 RCW or this chapter, the department will issue a citation that describes the violation.

Suspension or revocation - Of an electrical contractor's license, administrator's certificate, master electrician's certificate of competency, electrician's certificate of competency, or training certificate.

(2) The department may revoke or suspend, for such time as it determines appropriate, an electrical contractor's license, administrator's certificate, master electrician's certificate of competency, electrician's certificate of competency, or training certificate if:

(a) The license, certificate, or permit was obtained through error or fraud;

(b) The license, certificate, or permit holder is judged to be incompetent to work in the electrical construction trade as a master electrician, ((journeyman)) journey level electrician, specialty electrician, electrical technician, or electrical trainee;

(c) For serious noncompliance as described below. See RCW 19.28.241 and 19.28.341 for other grounds and procedures.

(d) The license or certificate holder incompletely or inaccurately reported continuing or basic trainee class education units on an application for renewal; or

(e) The certificate holder falsely, incompletely, or inaccurately reported previous work experience.

The department will deny an application for any license/certificate during the period of revocation or suspension of the same or another license/certificate under chapter 19.28 RCW.

(3) For the purposes of this section, serious noncompliance includes, but is not limited to, any of the following:

(a) Failure to correct a serious violation. A serious violation is a violation of chapter 19.28 RCW or chapter 296-46B WAC that creates a hazard of fire or a danger to life safety. A serious violation is also a violation that presents imminent danger to the public. Imminent danger to the public is present

when installations of wire and equipment that convey or utilize electric current have been installed in such a condition that a fire-hazard or a life-safety hazard is present. Imminent danger to the public is also present when unqualified, uncertified, or fraudulently certified electricians or administrators; or unlicensed or fraudulently licensed contractors are continuously or repeatedly performing or supervising the performance of electrical work covered under chapter 19.28 RCW. For the purposes of this section, a certified electrician is considered qualified, provided the electrician is working within his or her certification;

(b) The license or certificate was obtained through error or fraud;

(c) Submitting a fraudulent document to the department;

(d) Continuous noncompliance with the provisions of chapter 19.28 RCW or this chapter. For the purposes of this section, continuous noncompliance will be defined as three or more citations demonstrating a disregard of the electrical law, rules, or regulations within a period of three years, or where it can be otherwise demonstrated that the contractor, master electrician, electrician, or administrator has continuously failed to comply with the applicable electrical standards;

(e) Failure to make any books or records, or certified copies thereof, available to the department for an audit to verify the hours of experience submitted by an electrical trainee;

(f) Making a false statement or material misrepresentation on an application, statement of hours, or signed statement required by the department;

(g) The certificate holder falsely or inaccurately reported continuing or basic trainee class education units on an application for renewal;

(h) Installing a shortened rod/pipe grounding electrode, improper splicing of conductors in conduits/raceways or concealed within walls, or installing a fake equipment grounding conductor.

For any act of serious noncompliance, the person, firm, partnership, corporation, or other entity may be referred to the county prosecutor for criminal prosecution under chapter 9A.72 RCW. The department may also file a civil action under chapter 19.28 RCW.

(4) Before a license or certificate is revoked or suspended, the certificate holder will be given written notice of the department's intention to suspend or revoke. Notification will be sent by registered mail to the certificate holder's last known address. The notification will list the allegations against the certificate holder, and provide the certificate holder with the procedures necessary to request a hearing before the electrical board as described in WAC 296-46B-995.

Confiscation - Of an electrical contractor's license, administrator certificate, electrician certificate of competency, or training certificate.

(5) The department may confiscate a license or certificate that is counterfeit, revoked, expired, suspended, or altered. The individual may be referred to the county prosecutor for criminal prosecution under chapter 9A.72 RCW. The department may also file a civil action under chapter 19.28 RCW.

AMENDATORY SECTION (Amending WSR 13-03-128, filed 1/22/13, effective 3/1/13)

WAC 296-46B-997 Engineer approval. (1) This section describes the methods required to obtain recognition and accreditation of professional engineers registered under chapter 18.43 RCW to approve industrial utilization equipment. This section provides assurance to the general consuming public that electrical products have been tested for safety and identified for their intended use.

(2) Industrial utilization equipment is considered to be safe when it is certified by an engineer accredited by the department.

(a) The department may declare industrial utilization equipment unsafe if:

(i) The equipment is not being manufactured or produced in accordance with all standards of design and construction and all terms and conditions set out in the certification report for the equipment referred to in this chapter;

(ii) The equipment has been shown by field experience to be unduly hazardous to persons or property;

(iii) An examination of the equipment or of the certification report for the equipment shows that the equipment does not comply with all applicable standards; or

(iv) An examination of the certification report or the equipment shows that the equipment cannot be installed in accordance with this chapter.

(b) When the department declares industrial utilization equipment unsafe, the department will notify the product owner and the certifying engineer in writing.

Accreditation - General.

(3) The department's chief electrical inspector's office reviews requests for accreditation. Applicants must submit supporting data to document and verify the requirements of this section have been met.

(4) The accreditation of an engineer will be valid for the period of three years.

(5) On-site inspection of an engineer's facilities.

(a) On-site inspection of the facility(ies) may be required during the initial application process or the renewal process. Representative(s) of the department will evaluate for compliance with accreditation criteria.

(b) The applicant must pay all costs associated with the on-site inspection.

(6) For purposes of chapter 19.28 RCW, all engineers who certify industrial utilization equipment offered for sale in the state of Washington must be accredited by the department.

(7) Fees are payable as required in WAC 296-46B-911.

(8) The engineer must apply for renewal of accreditation at least thirty days prior to the accreditation expiration date. The department will renew accreditation for the period of three years or notify the renewing engineer of the department's reason(s) of refusal following receipt of the completed form and renewal fee.

(9) The department accepts or denies engineer accreditation for engineers seeking to evaluate industrial utilization equipment within the state. Accreditation is determined when an engineer provides evidence to the department that all the requirements of this chapter are met. Accreditation is deter-

mined by the department and prior to making a determination, the department may require information and documentation to be provided by the engineer.

(a) Accreditation is subject to review when deemed necessary by the department. The engineer must pay all costs associated with on-site review.

(b) Every accredited engineer must continue to satisfy all the conditions specified in this chapter during the period of the accreditation. An engineer must furnish the department an annual report detailing the extent of its activities for the year. The report must include, but not be limited to:

(i) The number of industrial utilization equipment items approved;

(ii) Organizational structure of the engineer's company;

(iii) Statement of ownership of the engineer's company; and

(iv) Reports of litigation, which in any way were the result of or may affect any accreditation or testing of products covered by this chapter.

(c) The department will notify the applicant of the accreditation results. A letter of accreditation from the department is proof of the accreditation of the engineer.

(10) The engineer will be approved to certify industrial utilization equipment.

Suspension or revocation.

(11) The department may suspend, revoke, or refuse to renew the department's accreditation of any engineer found to be in noncompliance with requirements of this chapter, the laws of the state of Washington, or submitting false information.

(12) The department will serve written notice of intent prior to suspension, revocation, or refusal to renew the accreditation of an engineer.

(13) An engineer, whose accreditation has been suspended, may not reapply for accreditation during the period of such suspension. An engineer, whose accreditation has been revoked, may reapply for accreditation no sooner than two years after the date of revocation of accreditation.

Business structure, practices, and personnel.

(14) The engineer must be an independent, third-party organization with no organizational, managerial, financial, design, or promotional affiliation with owners, manufacturers, suppliers, installers, or vendors of products covered under the engineer's certification or evaluation programs.

The engineer must have an adequate diversity of clients or activity so that the loss or award of a specific contract regarding certification or evaluation would not be a deciding factor in the financial well-being of the engineer.

(15) The engineer must adequately meet the following business practices:

(a) Perform the examinations, tests, evaluations, and inspections required under the certifications programs in accordance with the designated standards and procedures;

(b) Assure that reported values accurately reflect measured and observed data;

(c) Limit work to that for which competence and capacity is available;

(d) Treat test data, records, and reports as proprietary information;

(e) Respond to and attempt to resolve complaints contesting certifications and evaluation results;

(f) Maintain an independent relationship between its clients, affiliates, and other organizations so the engineer's capacity to give certifications and evaluations objectively and without bias is not adversely affected; and

(g) Notify the department within thirty calendar days should it become unable to conform to any of the requirements of this chapter.

(16) Engineers accredited under this chapter must notify the department within thirty calendar days of any of the following:

(a) Change in company name and/or address;

(b) Changes in major test equipment which affect the ability to perform work for which accredited; or

(c) Change in independent status.

(17) The engineer must develop and maintain a certification or evaluation program plan that includes, but is not limited to:

(a) The procedures and authority to ensure the product complies with the standard(s) established by the program;

(b) A quality control system;

(c) Verification and maintenance of facilities and/or equipment; or

(d) Sample selection as applicable for product certifications, and for component testing as necessary for evaluations.

The plan must demonstrate that the engineer has adequate facilities, and equipment to perform all certifications and testing for which it is accredited by the state of Washington. These elements must be contained in the engineer's operations control manual.

(18) The engineer must develop and maintain a quality control system adequate to assure the accuracy and technical integrity of its work as follows:

(a) The engineer's quality control system must include a quality control or engineer's operations control manual;

(b) The quality control or engineer's operations control manual must be adequate to guide a testing technician or inspector in conducting the inspection, evaluation, and/or test in accordance with the test methods and procedures required for the engineer's certification and/or evaluation program(s); and

(c) The engineer must have a current copy of the quality control or engineer operations control manual available for the engineer's use.

(19) The engineer must have training, technical knowledge, and experience adequate to perform the tests, examinations, and evaluations for the certification and/or evaluation activities for which recognition is sought.

(20) The engineer must:

(a) Provide adequate safeguards protecting the engineer's status from the influence or control of manufacturers, vendors, owners, or installers of electrical products certified or tested by the engineer; and

(b) Develop and maintain an adequate training program assuring that the engineer will be able to perform tasks properly and uniformly.

Recordkeeping and reporting - General.

(21) The engineer must develop and maintain records and reports of those testing, inspection, certification, and evaluation activities associated with each piece of industrial utilization equipment. The engineer must retain these records for a minimum of three years.

(22) The engineer must make available to the department, upon request, all records required by the department to verify compliance with this chapter.

(23) See WAC 296-46B-906 for fee information. The engineer's evaluation report must include:

(a) Name and address of the engineer;

(b) Name of client;

(c) Address where the evaluated product is or will be installed;

(d) Designation of standards used to certify or test the product including edition and latest revision (e.g., UL 508, 16th Edition, Feb. 1993, Revision Oct. 9, 1997);

(e) Description of the overall product evaluated to include full nameplate data and equipment type;

(f) A statement as to whether or not the results comply with the requirements of the standard;

(g) Pertinent test evaluation data and identification of tests or inspections including anomalies;

(h) The engineer's stamp; and

(i) Any condition of acceptability or restrictions on use/relocation.

(24) Within ten calendar days after affixing the evaluation mark, the engineer must submit a copy of the evaluation report to their:

(a) ~~((The department's chief electrical inspector submitted electronically in a format approved by the department;~~

~~((b))) Local electrical inspection office submitted electronically in a format approved by the department; and~~

~~((e))) (b) Client submitted in any format acceptable to the client and engineer.~~

AMENDATORY SECTION (Amending WSR 13-03-128, filed 1/22/13, effective 3/1/13)

WAC 296-46B-999 Electrical testing laboratory requirements. General.

(1) This section describes the methods required to obtain recognition and accreditation of electrical product(s) certification and/or field evaluation laboratories by the state of Washington. This section provides assurance to the general consuming public that electrical products have been tested for safety and identified for their intended use.

(2) An electrical product is considered to be safe when it is either certified by a laboratory accredited by the department or labeled with a field evaluation mark by a laboratory accredited by the department.

(a) The department may declare electrical equipment unsafe if:

(i) The equipment is not being manufactured or produced in accordance with all standards of design and construction and all terms and conditions set out in the certification report for the equipment referred to in this chapter;

(ii) The equipment has been shown by field experience to be unduly hazardous to persons or property;

(iii) An examination of the equipment or of the certification report for the equipment shows that the equipment does not comply with all applicable standards; or

(iv) An examination of the certification report or the equipment shows that the equipment cannot be installed in accordance with this chapter.

(b) When the department declares an electrical product unsafe, the department will:

(i) Notify the product manufacturer and the appropriate testing laboratory in writing;

(ii) Notify the general public by:

(A) Report to the Consumer Product Safety Commission;

(B) A published article in the *Electrical Currents*;

(C) Internet web site posting; and/or

(D) News release.

Accreditation - General.

(3) The department's chief electrical inspector's office reviews requests for accreditation or evaluation. Applicants must submit supporting data to document and verify the requirements of this section have been met.

(4) The accreditation of a NRTL will be valid for the period of the laboratory's current OSHA NRTL accreditation. The accreditation of a non-NRTL will be valid for the period of five years from the date of the department's accreditation.

(5) On-site inspection of a laboratory.

(a) On-site inspection of the laboratory may be required during the initial application process or the renewal process. Technically qualified representative(s) of the department will evaluate for compliance with accreditation criteria.

(b) On-site inspection is not required for NRTL-recognized laboratories requesting approval as certification laboratories using standards for which NRTL recognition has been approved.

(c) The department may waive on-site inspection for:

(i) Laboratories recognized or accredited by another state determined to provide an accreditation program acceptable to the department; or

(ii) NRTL-recognized laboratories requesting approval as certification laboratories for using other standards for which NRTL recognition has not been approved.

(d) The applicant must pay all costs associated with the on-site inspection.

(6) For purposes of chapter 19.28 RCW, all laboratories which certify and/or field evaluate electrical products offered for sale in the state of Washington must be accredited by the department. A NRTL requesting approval as a certification laboratory will be approved for accreditation by the department upon completion of the application process.

(7) Fees are payable as required in WAC 296-46B-911.

(8) The laboratory must apply for renewal of accreditation at least thirty days prior to the accreditation expiration date. The department will renew accreditation for the period specified in subsection (4) of this section or notify the renewing laboratory of the department's reason(s) of refusal following receipt of the completed form and renewal fee. Accreditation may be renewed or refused for one or more electrical product category(ies).

(9) The department accepts or denies laboratory accreditation for all laboratories within the state. Accreditation is determined when a laboratory provides evidence to the department that all the requirements of this chapter are met. Accreditation is determined by the department and prior to making a determination, the department may require information and documentation to be provided by the laboratory.

(a) Accreditation is subject to review when deemed necessary by the department. The laboratory must pay all costs associated with on-site review.

(b) Every accredited laboratory must continue to satisfy all the conditions specified in this chapter during the period of the accreditation. A non-NRTL accredited laboratory must furnish the department an annual report detailing the extent of its activities for the year. The report must include, but not be limited to:

- (i) The number of factory inspections;
- (ii) Organizational structure of the laboratory;
- (iii) Statement of ownership of the laboratory;
- (iv) Laboratory equipment verification;
- (v) Client accreditation programs;

(vi) Reports of litigation, which in any way were the result of or may affect any accreditation or testing of products covered by this chapter; or

(vii) Assessment of recordkeeping (i.e., certification/evaluation plans, certification/evaluation reports).

(c) The department will notify the applicant of the accreditation results. A letter of accreditation from the department is proof of the accreditation of a laboratory.

(10) The laboratory will be approved to certify only those categories identified and authorized by the department. The department will approve and list electrical product category(ies) the laboratory is qualified to certify or evaluate. The accreditation letter will indicate the electrical product category(ies) for which accreditation is issued.

(11) The department may exclude specific electrical products from acceptance. When required, the laboratory must provide evidence, acceptable to the department, that the laboratory is qualified to certify or field evaluate the specific electrical product. Laboratory recognition as an NRTL for the standard(s) used to certify or field evaluate an electrical product will be acceptable evidence. The standards used for certification or field evaluation must be determined by the department to be acceptable and applicable to the electrical product being certified or field evaluated.

If a laboratory chooses to add additional standards prior to its expiration date, it must submit a Request Approval for Additional Standards form to the chief electrical inspector.

Suspension or revocation.

(12) Any laboratory failing to comply with the requirements of this chapter or submitting false information may have accreditation revoked or suspended for one or more electrical product category(ies).

(13) The department may suspend, revoke, or refuse to renew the accreditation of any laboratory found to be in non-compliance with this chapter or the laws of the state of Washington.

(14) The department will serve written notice of intent prior to suspension, revocation, or refusal to renew the accreditation of a laboratory.

(15) The laboratory must immediately notify all manufacturers whose products are covered by the accreditation that such products manufactured subsequent to the departmental revocation and offered for sale in the state of Washington can no longer bear the laboratory's label that identified it as a certified product in the state of Washington. A laboratory, whose accreditation has been suspended, may not reapply for accreditation during the period of such suspension. A laboratory, whose accreditation has been revoked, may reapply for accreditation no sooner than one year after the date of revocation of accreditation.

Business structure, practices, and personnel.

(16) The laboratory must be an independent, third-party organization with no organizational, managerial, financial, design, or promotional affiliation with manufacturers, suppliers, installers, or vendors of products covered under its certification or evaluation programs.

The laboratory must have an adequate diversity of clients or activity so that the loss or award of a specific contract regarding certification or evaluation would not be a deciding factor in the financial well-being of the laboratory.

(17) The laboratory must adequately meet the following business practices:

(a) Perform the examinations, tests, evaluations, and inspections required under the certifications programs in accordance with the designated standards and procedures;

(b) Assure that reported values accurately reflect measured and observed data;

(c) Limit work to that for which competence and capacity is available;

(d) Treat test data, records, and reports as proprietary information;

(e) Respond and attempt to resolve complaints contesting certifications and evaluation results;

(f) Maintain an independent relationship between its clients, affiliates, and other organizations so the laboratory's capacity to give certifications and evaluations objectively and without bias is not adversely affected; and

(g) Notify the department within thirty calendar days should it become unable to conform to any of the requirements of this chapter.

(18) Laboratories accredited under this chapter must notify the department within thirty calendar days of any of the following:

(a) Change in company name and/or address;

(b) Changes in major test equipment which affect the ability to perform work for which accredited;

(c) Changes in principal officers, key supervisory and responsible personnel in the company including the director of testing and engineering services, director of follow-up services, and the laboratory supervisor; or

(d) Change in independent status.

(19) The laboratory must develop and maintain a certification or evaluation program plan that includes, but is not limited to:

- (a) The procedures and authority to ensure the product complies with the standard(s) established by the program;
- (b) A quality control system;
- (c) Adequate personnel to perform the certification or evaluation;
- (d) Verification and maintenance of facilities and/or equipment; or
- (e) Sample selection as applicable for product certifications, and for component testing as necessary for field evaluations.

The plan must demonstrate that the laboratory has adequate personnel, facilities, and equipment to perform all certifications and testing for which it is accredited by the state of Washington. These elements must be contained in the laboratory operations control manual.

(20) The laboratory must develop and maintain a quality control system adequate to assure the accuracy and technical integrity of its work as follows:

(a) The laboratory's quality control system must include a quality control or laboratory operations control manual;

(b) The quality control or laboratory operations control manual must be adequate to guide a testing technician or inspector in conducting the inspection, evaluation, and/or test in accordance with the test methods and procedures required for the laboratory's certification and/or evaluation program(s); and

(c) The laboratory must have a current copy of its quality control or laboratory operations control manual available in the laboratory for use by laboratory personnel.

(21) Competent personnel who must have training, technical knowledge, and experience adequate to perform the tests, examinations, and evaluations for the certification and/or evaluation activities for which recognition is sought must staff the laboratory.

(22) The laboratory must:

(a) Provide adequate safeguards protecting the employment status of personnel from the influence or control of manufacturers, vendors, or installers of electrical products certified or tested by the laboratory;

(b) Develop and maintain a job description for each technical position category;

(c) Ensure the competency of its staff to perform assigned tasks through individual yearly observation and/or examination by a person(s) qualified by the person who has technical responsibility for the laboratory;

(d) Develop and maintain records of the results and dates of the observation or examination of personnel performance;

(e) Maintain information on the training, technical knowledge, and experience of personnel; and

(f) Develop and maintain an adequate training program assuring that new or untrained personnel will be able to perform assigned tasks properly and uniformly.

Recordkeeping and reporting - General.

(23) The laboratory must develop and maintain records and reports of those testing, inspection, certification, and evaluation activities associated with each program for which accreditation is sought. The laboratory must retain these records for a minimum of three years.

(24) The laboratory must make available to the department, upon request, all records required by the department to verify compliance with this chapter.

Recordkeeping and reporting - Certification.

(25) Certification reports must contain, as applicable:

- (a) Name and address of the laboratory;
- (b) Pertinent data and identification of tests or inspections;

- (c) Name of client;

- (d) Appropriate product title;

(e) Designation of standards used to certify or test the product including edition and latest revision (e.g., UL 508, 16th Edition, Feb. 1993, Revision Oct. 9, 1997);

(f) Description and identification of the sample including, as necessary, where and how the sample was selected;

(g) Identification of the test, inspection, or procedure as specified for certification or evaluation by the standard;

(h) Known deviations, additions to, or exclusions from evaluation and certification activities in order to be appropriate for new or innovative products not contemplated by the standard;

(i) Measurements, examinations, derived results, and identification of test anomalies;

(j) A statement as to whether or not the results comply with the requirements of the standard;

(k) Name, contact information, and signature of person(s) having responsibility for the report;

(l) Raw data, calculations, tables, graphs, sketches, and/or photographs generated during certification or evaluation must be maintained if not included in the report;

(m) Control forms documenting the receipt, handling, storage, shipping, and testing of samples;

(n) Laboratory records of its quality control checks and audits for monitoring its test work associated with its certification programs, including:

- (i) Records of products assurance (follow-up) test results; and

- (ii) Records of detected errors and discrepancies and actions taken subsequent to such detection.

- (o) Record of written complaints and disposition thereof; and

- (p) A statement that records required by these criteria will be maintained for a minimum of three years after cessation of the certification or evaluation.

Recordkeeping and reporting - Field evaluation.

(26) The evaluation report must include:

- (a) Name and address of the laboratory;

- (b) Name of client;

(c) Address where the evaluated product is or will be installed;

(d) Designation of standards used to certify or test the product including edition and latest revision (e.g., UL 508, 16th Edition, Feb. 1993, Revision Oct. 9, 1997);

(e) Description and identification of the nonlisted and nonlabeled component(s) requiring evaluation by applicable standard(s);

(f) Description of the overall product evaluated to include full nameplate data and equipment type;

(g) A statement as to whether or not the results comply with the requirements of the standard;

(h) Pertinent test evaluation data and identification of tests or inspections including anomalies;

(i) Signature of person(s) having responsibility for the report;

(j) Any condition of acceptability or restrictions on use/relocation;

(k) Serial number(s) of the field evaluation label(s) applied must be included with the equipment identification; and

(l) ~~((The labor and industries department file identification number; and~~

~~(m)) Date the equipment label was affixed.~~

(27) Within thirty calendar days after affixing the evaluation mark, the laboratory must submit a copy of the evaluation report to their:

(a) ~~((The department's chief electrical inspector submitted electronically in a format approved by the department;~~

(b)) Local electrical inspection office submitted electronically in a format approved by the department; and

((e)) (b) Client submitted in any format acceptable to the client and testing laboratory.

Facilities and equipment.

(28) The laboratory must provide adequate evidence of the calibration, verification, and maintenance of the facilities and equipment specified for each certification or evaluation.

(29) Verification and maintenance of facilities and equipment must include as applicable, but not be limited to:

(a) Equipment description;

(b) Name of manufacturer;

(c) Model, style, serial number, or other identification;

(d) Equipment variables subject to calibration and verification;

(e) Statement of the equipment's allowable error and tolerances of readings;

(f) Calibration or verification procedure and schedule;

(g) Dates and results of last calibrations or verifications;

(h) Specified maintenance practices;

(i) Calibration and/or verification of equipment used;

(j) Name and contact information of personnel or outside contractor providing the calibration or verification service; and

(k) Traceability to National Institute of Standards and Technology or other equivalent standard reference authority.

Standards.

(30) The laboratory must have copies available, for laboratory personnel use, of applicable standards and other documents referred to or used in performing each certification or test for which approval is sought.

(31) If a laboratory desires to use a standard other than an ANSI standard, the department will evaluate the proposed standard to determine that it provides an adequate level of safety. The National Electrical Code, NFPA 70, will not be allowed to be the primary standard used to evaluate a product.

Product certification.

(32) The electrical product certification program must contain test procedure(s), standard(s) used, certification agreement(s), method(s) of identification of products, follow-up inspection, and other laboratory procedures and authority necessary to ensure that the product complies with the standards (requirements) established by the program.

(33) All components of certified or tested products must be labeled or evaluated for compliance with all standards and conditions of use applicable to such components.

(34) The laboratory must publish an *Annual Product Directory* identifying products that are authorized to bear the laboratory's certification mark. The products directory must briefly describe the program, the products covered, the name of the manufacturer or vendor of the certified products, and the identification of the published standards or the compiled requirements on which the program is based. The product directory must be available to the public. Supplemental up-to-date information must be available to the public at the office of the laboratory during normal business hours.

Certification laboratory/manufacturer - Agreement.

(35) Measures to provide for manufacturer compliance with the provisions of the product standard and laboratory control of the use of the certification mark must be embodied in an agreement between the manufacturer and the certification laboratory. The certification agreement must:

(a) Require the manufacturer to provide information and assistance as needed by the laboratory to conduct the necessary product conformity and production assurance evaluation;

(b) Allow the laboratory's representative(s) access to the manufacturer's facilities during working hours for inspection and may allow audit activities without prior notice;

(c) Restrict the manufacturer's application of certification marks to products that comply with requirements of the product standard;

(d) Secure the manufacturer's agreement to the publication of notice by the certification laboratory for any product already available in the marketplace that does not meet the safety standard;

(e) Require reevaluation of products whenever the standard covering the product is revised;

(f) Require the laboratory to notify the manufacturer's personnel responsible for and authorized to institute product recall in the case of a hazard;

(g) Provide for control of certification marks by the laboratory;

(h) Require that the laboratory provide the manufacturer with a report of original product evaluation. The report must document conformity with applicable product standards by test results and other data; and

(i) Require the identification of the manufacturer(s) of the product and the location(s) where the product is produced.

Certification mark.

(36) The laboratory owns the certification mark.

(37) The certification mark must be registered as a certification mark with the United States Patent and Trademark Office.

(38) The certification mark must:

(a) Not be readily transferable from one product to another;

(b) Be directly applied to each unit of production in the form of labels or markings suitable for the environment and use of the product. When the physical size of the unit does not permit individual marking, markings may be attached to the smallest package in which the unit is marketed;

(c) Include the name or other appropriate identification of the certification laboratory;

(d) Include the product category; and

(e) The laboratory must have a system of controls and records for all marks. The records must include marks removed or otherwise voided. See WAC 296-46B-999(25).

(39) The certification mark may be applied to the product prior to authorizing the use of a certification mark on a product. The laboratory must:

(a) Determine by examination and/or tests that representative samples of the product comply with the requirements (standards). Components of certified products must comply with the applicable safety requirements (standards) or be listed. Evaluation of the product design must be made on representative production samples or on prototype product samples with subsequent verification that factory productions are the same as the prototype;

(b) Determine that the manufacturer has the necessary facilities, test equipment, and control procedures to ensure that continuing production of the product complies with the requirements; and

(c) If the certification mark is not applied at the manufacturing facility, the laboratory must provide prior notification to the department of its intent to affix the certification mark in the field.

Certification laboratory product - Assurance/follow up.

(40) To verify continued product acceptability, the laboratory must develop and maintain a factory follow-up inspection program and manual to determine continued compliance of certified products with the applicable standard.

(41) The follow-up inspection file must include the:

(a) Conditions governing the use of the certification mark on products;

(b) Identification of the products authorized for certification;

(c) Identification of manufacturer and plant location at which manufacture and certification are authorized;

(d) Description, specifications, and requirements applicable to the product;

(e) Description of processes needed for control purposes;

(f) Description of the manufacturer's quality assurance program when used as part of the follow-up program;

(g) Description of inspections and tests to be conducted by the manufacturer and the laboratory; and

(h) Description of follow-up tests to be conducted in the laboratory.

(42) Follow-up procedures and activities must include:

(a) Periodic inspections at the factory with testing at the factory or certification laboratory of representative samples selected from production and, if appropriate, from the market;

(b) Periodic auditing or surveillance of the manufacturer's quality assurance program through the witnessing of manufacturer's tests, review of the manufacturer's records, and verification of the manufacturer's produced data;

(c) Investigation of alleged field failures upon department request; and

(d) Procedures for control of the use of the certification mark by:

(i) Keeping records of the release and use of certification marks;

(ii) Removal of marks from noncomplying products;

(iii) Return or destruction of unused marks when the authority to use the marks is terminated; and

(iv) Legal action.

(43) The frequency of laboratory follow-up inspections must not be less than four times per year during production, unless adequate data is provided to the department to justify less frequent inspections. If there is no production during the year, at least one follow-up inspection is to be completed. The frequency of follow-up inspections must be sufficient to provide a reasonable check on the method(s) the manufacturer exercises to assure that the product bearing the certification mark complies with the applicable standards.

Field evaluation - Requirements.

(44) The field evaluation laboratory may perform evaluations on any products or product categories previously approved by the department. NRTL recognition may be accepted by the department as a basis for approval to perform field evaluations. Since OSHA does not review or recognize laboratories for field evaluation purposes, laboratories seeking accreditation from the department for field evaluation may be required to provide additional justification of capability such as, but not limited to: Recordkeeping, employee standards and proficiency, equipment requirements, and other requirements described in this chapter.

(45) The scope of a field evaluation will depend on the status of the item to be evaluated as follows:

(a) A new piece of equipment must have a complete evaluation of all components and the assembly as provided by the manufacturer. For example: An industrial machine with a control panel, remote motors, sensors, controls, and other utilization equipment; and

(b) A product that has been modified internally or by an addition need have only those portions evaluated that were affected by the modification. For example: A switchboard with multiple sections that has a section added would only need the new section, the one section immediately adjacent, and any control modifications evaluated.

(46) Each unit that receives a field evaluation mark applied by the field evaluation laboratory must have sufficient inspections and/or testing completed to ensure it is in essential conformance with the applicable product standard(s).

(47) The laboratory may perform the preliminary evaluation in the manufacturer's facility. Final evaluation and acceptance of the product must be made on-site at the location of final installation, unless waived by the department.

Field evaluation mark.

(48) Only laboratory personnel may apply the field evaluation mark after final acceptance of the product. The field evaluation label must be applied on-site at the location of the final installation, unless waived by the department.

(49) The field evaluation laboratory must have a system of controls and records for all field evaluation marks it applies. The records must include labels removed or otherwise voided.

(50) A field evaluated product may be relocated or fed from a different power source if not prohibited by the field evaluation mark or the field evaluation report.

(51) The field evaluation mark must:

(a) Not be readily transferable from one product to another;

(b) Be directly applied by the laboratory personnel to each unit of production in the form of labels or markings suitable for the environment and use of the product;

(c) Include the name or other appropriate identification of the certification laboratory;

(d) Include a unique evaluation laboratory reference number; and

(e) Include a reference to the evaluation report or other notation if there are any limitations of use noted within the report.

(52) The field evaluation laboratory must have a system of controls and records for all field evaluation marks it applies. The records must include labels removed or otherwise voided. See subsection (26) of this section.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 296-46B-406 Receptacles, cord connectors, and attachment plugs.

WAC 296-46B-445 Wind driven generator equipment.

WAC 296-46B-645 Information technology equipment.

WSR 14-06-098
PROPOSED RULES
OFFICE OF
INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2013-19—Filed March 5, 2014,
 7:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-17-050.

Title of Rule and Other Identifying Information: Stand alone dental—Pediatric dental benefits plan design.

Hearing Location(s): Office of the Insurance Commissioner, Training Room (TR-120), 5000 Capitol Boulevard S.E., Tumwater, WA, on April 8, 2014, at 1:30 p.m.

Date of Intended Adoption: April 10, 2014.

Submit Written Comments to: Donna Dorris, P.O. Box 40258, Olympia, WA 98504-0258, e-mail rulescoordinator@oic.wa.gov, fax (360) 586-3109, by April 8, 2014.

Assistance for Persons with Disabilities: Contact Lori [Lorie] Villaflores by April 7, 2014, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule will allow health benefit plans to have optional plan designs that are compliant with the Affordable Care Act and include pediatric dental benefits as one of the ten essential health benefits categories.

Reasons Supporting Proposal: Legislation passed during the regular 2013 legislative session and now codified as RCW 48.43.715 [(3)](c) and (d) require that to the extent permitted by federal law and guidance, pediatric oral services be offered in stand alone dental plans for nongrandfathered individual and small group markets outside of the exchange.

Statutory Authority for Adoption: RCW 48.02.060, 48.43.715.

Statute Being Implemented: RCW 48.43.715.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Donna Dorris, P.O. Box 40258, Olympia, WA 98504-0258, (360) 725-7040; Implementation: Molly Nollette, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7117; and Enforcement: AnnaLisa Gellermann, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7050.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The entities that must comply with this proposed rule are not small businesses, as defined in chapter 19.85 RCW.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Donna Dorris, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 725-7040, fax (360) 586-3109, e-mail rulescoordinator@oic.wa.gov.

March 5, 2014
 Mike Kreidler
 Insurance Commissioner

AMENDATORY SECTION (Amending WSR 13-15-025, filed 7/9/13, effective 7/10/13)

WAC 284-43-879 Essential health benefit category—Pediatric oral services. A health benefit plan must include "pediatric ((oral services)) dental benefits" in its essential health benefits package. Pediatric dental benefits means coverage for the oral services ((are oral services)) listed in subsection (3) of this section, delivered to those under age nineteen.

(1) For benefit years beginning January 1, 2015, a health benefit plan must ((ever)) include pediatric ((oral services))

dental benefits as an embedded set of ((servicees)) benefits, or through a combination of a health benefit plan and a stand-alone dental plan that includes pediatric dental benefits certified as a qualified dental plan. ((H)) For a health benefit plan ((is)) certified by the health benefit exchange as a qualified health plan, this requirement is met ((for that benefit year for the certified plan)) if a stand-alone dental plan ((that covers pediatric oral services as set forth in the EHB-benchmark plan)) meeting the requirements of subsection (3) of this section is offered in the health benefit exchange for that benefit year.

(2) The requirements of WAC 284-43-878 and 284-43-880 are not applicable to the stand-alone dental plan. A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. The supplemental base-benchmark plan specifically excludes oral implants, and an issuer should not include benefits for oral implants in establishing a plan's actuarial value.

(3) **Supplementation:** The base-benchmark plan covers pediatric services for the categories set forth in WAC 284-43-878, but does not ((include)) cover pediatric oral services. Because the base-benchmark plan does not ((include)) cover pediatric oral benefits, the state EHB-benchmark plan requirements ((is)) are supplemented for pediatric oral benefits. The Washington state CHIP plan is designated as the supplemental base-benchmark plan for pediatric ((oral services. An)) dental benefits. A health plan issuer must offer coverage for and classify the following ((servicees as)) pediatric oral services as pediatric dental benefits in a manner substantially equal to the supplemental base-benchmark plan:

- (a) Diagnostic services;
- (b) Preventive care;
- (c) Restorative care;
- (d) Oral surgery and reconstruction to the extent not covered under the hospitalization benefit;
- (e) Endodontic treatment;
- (f) Periodontics;
- (g) Crown and fixed bridge;
- (h) Removable prosthetics; and
- (i) Medically necessary orthodontia.

(4) The supplemental base-benchmark plan's visit limitations on services in this category are:

- (a) Diagnostic exams once every six months, beginning before one year of age;
- (b) Bitewing X ray once a year;
- (c) Panoramic X rays once every three years;
- (d) Prophylaxis every six months beginning at age six months;
- (e) Fluoride three times in a twelve-month period for ages six and under; two times in a twelve-month period for ages seven and older; three times in a twelve-month period during orthodontic treatment; sealant once every three years for occlusal surfaces only; oral hygiene instruction two times in twelve months for ages eight and under if not billed on the same day as a prophylaxis treatment;
- (f) Every two years for the same restoration (fillings);
- (g) Frenulectomy or frenuloplasty covered for ages six and under without prior authorization;
- (h) Root canals on baby primary posterior teeth only;

- (i) Root canals on permanent anterior, bicuspid and molar teeth, excluding teeth 1, 16, 17 and 32;

- (j) Periodontal scaling and root planing once per quadrant in a two-year period for ages thirteen and older, with prior authorization;

- (k) Periodontal maintenance once per quadrant in a twelve-month period for ages thirteen and older, with prior authorization;

- (l) Stainless steel crowns for primary anterior teeth once every three years; if age thirteen and older with prior authorization;

- (m) Stainless steel crowns for permanent posterior teeth once every three years;

- (n) Metal/porcelain crowns and porcelain crowns on anterior teeth only, with prior authorization;

- (o) Space maintainers for missing primary molars A, B, I, J, K, L, S, and T;

- (p) One resin based partial denture, if provided at least three years after the seat date;

- (q) One complete denture upper and lower, and one replacement denture per lifetime after at least five years from the seat date;

- (r) Rebasing and relining of complete or partial dentures once in a three-year period, if performed at least six months from the seat date.

NEW SECTION

WAC 284-170-800 Purpose and scope—Pediatric dental benefits for health benefit plans sold outside of the health benefit exchange. For plan years beginning on or after January 1, 2015, each nongrandfathered health benefit plan offered, issued or renewed to small employers or individuals, outside the Washington health benefit exchange, must include pediatric dental benefits as an essential health benefit (EHB). This design requirement must be met by one of the methods set forth in WAC 284-170-810. Pediatric dental benefits must meet cost sharing requirements including deductible and out-of-pocket maximums as required by the ACA. All pediatric dental benefits are subject to premium tax.

NEW SECTION

WAC 284-170-805 Definitions. "PPACA" or "ACA" means the federal Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152), collectively known as the Affordable Care Act, and any rules, regulations, or guidance issued, thereunder.

"Stand-alone dental plan" means coverage for a set of benefits limited to oral care including, but not necessarily limited to, the pediatric oral services listed in WAC 284-43-879(3).

NEW SECTION

WAC 284-170-810 Pediatric dental benefits design—Methods of satisfying requirements. (1) An issuer of a health benefit plan may satisfy the requirement of WAC 284-170-800 in any one of the following ways.

(a) A health benefit plan includes pediatric dental benefits as an embedded benefit; or

(b) A separate health benefit plan is offered without pediatric dental benefits, if and only if, the issuer receives reasonable assurance that the applicant has obtained or will obtain pediatric dental benefits through a stand-alone dental plan certified as a qualified dental plan. This reasonable assurance must be received by the issuer within sixty days.

(i) "Reasonable assurance" means receipt of proof of coverage from the stand-alone dental plan and a signed attestation of coverage from the enrollee. In cases where the enrollment process is for a health plan and a dental plan that are being jointly purchased (bundled), verification by the dental carrier of enrollment in the dental plan and transmission of the enrollment confirmation to the health carrier will be considered reasonable assurance.

(ii) The health benefit plan issuer has the responsibility to obtain any required documents establishing reasonable assurance at the initial application and every renewal.

(iii) The stand-alone dental plan issuer has the responsibility for providing the proof of coverage upon request of the health benefit plan issuer or enrollee. If a health benefit plan issuer requests proof of coverage for an enrollee, the stand-alone dental issuer must provide proof of coverage or inform the health benefit plan issuer that no coverage exists. The stand-alone dental issuer must respond within thirty days of a request for proof of coverage.

(iv) The health benefit plan issuer may issue coverage prior to receiving reasonable assurance. If the health benefit plan issuer receives the reasonable assurance within sixty days of the effective date of the health benefit plan, the enrollee's stand-alone dental coverage will be considered to satisfy the requirement of WAC 284-43-879. If the health benefit plan issuer does not receive reasonable assurance within the sixty days provided in (iii) of this subsection, the health benefit plan issuer must discontinue the health benefit plan for that enrollee unless and until the health benefit plan issuer receives reasonable assurance that the enrollee has obtained pediatric dental benefits as required under the ACA.

(2) Nothing in this section precludes issuing ACA compliant pediatric dental benefits as part of a family dental plan sold as group or individual coverage.

N.E., Marysville, WA 98270, on April 22, 2014, at 6:00 p.m.; at the Red Lion, Birch Room, 510 South Kelso Drive, Kelso, WA 98626, on April 24, 2014, at 6:00 p.m.; and at the Hilton Garden Inn, Boardroom, 401 East Yakima Avenue, Yakima, WA 98901, on April 29, 2014, at 6:00 p.m.

Date of Intended Adoption: May 6, 2014.

Submit Written Comments to: George A. Twiss, PLS, Executive Director, Board of Registration for Professional Engineers and Land Surveyors, P.O. Box 9025, Olympia, WA 98507-9025, e-mail engineers@dol.wa.gov, fax (360) 664-2551, by April 8, 2014.

Assistance for Persons with Disabilities: Contact Cassandra Fewell, executive assistant, by April 8, 2014, TTY (360) 664-0116 or (360) 664-1564.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Historically the scope of engineering practice was interpreted by the board to include some minor amounts of land surveying provided the surveying work was for the engineer's professional use. To clarify this, in 2007, the board adopted a policy statement pertaining to when and under what circumstances a professional engineer could engage in practice that might be seen as within the scope of land surveying.

Reasons Supporting Proposal: The board believes that the content of the 2007 policy should now be adopted as an amendment to Title 196 WAC.

Statutory Authority for Adoption: RCW 18.43.035.

Statute Being Implemented: Chapter 18.43 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Board of registration for professional engineers and land surveyors, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: George Twiss, 405 Black Lake Boulevard, Olympia, WA 98502, (360) 664-1565.

No small business economic impact statement has been prepared under chapter 19.85 RCW. There is no fiscal impact to licensees.

A cost-benefit analysis is not required under RCW 34.05.328. There is no fiscal impact to licensees.

March 5, 2014

Damon Monroe
Rules Coordinator

NEW SECTION

WAC 196-29-205 What topographic measurements may a professional engineer perform? The practice of engineering, as provided in chapter 18.43.020 (5)(a), includes knowledge of the mathematical, physical, and engineering sciences for the consultation, investigation, evaluation, planning, design, and supervision of construction for the purpose of assuring compliance with specifications and design. Within this definition is the expectation for an engineer to obtain all necessary site information to satisfy design requirements. When the site information requires the collection of topographic measurements the engineer may perform incidental surveying for the collection and mapping of those measurements when the work is:

WSR 14-06-101

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed March 5, 2014, 8:52 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-20-012.

Title of Rule and Other Identifying Information: Chapter 196-29 WAC, Professional practices, proposal of rule regarding engineering measurements.

Hearing Location(s): Davenport Hotel, Cutter Room, 10 South Post Street, Spokane, WA 99201, on April 10, 2014, at 6:00 p.m.; at the Radisson Hotel, Boardroom 2, 18118 International Boulevard, Seattle, WA 98188, on April 16, 2014, at 6:00 p.m.; at the Holiday Inn, Boardroom, 8606 36th Avenue

(1) Limited to the survey of land areas for the purpose of determining the topography thereof, the making of topographical delineations and the preparing of maps; and

(2) Performed by the engineer for his or her exclusive use toward the development of the engineered design; and

(3) Performed in a manner that is consistent with the topography's intended purpose and accepted standards of practice; and

(4) Performed in a manner that demonstrates the engineer is competent and conversant in the techniques to correctly develop and map topographic information; and

(5) Is signed and sealed by the engineer in accordance with the requirements of chapter 196-23 WAC, Stamping and seals.

Porso, 243 Israel Road S.E., Tumwater, WA 98501, (360) 236-3302.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(f), a small business economic impact statement is not required for proposed rules that set or adjust fees or rates pursuant to legislative standards.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(vi) exempts rules that set or adjust fees or rates pursuant to legislative standards.

March 5, 2014

Jessica Todorovich

Deputy Secretary

for John Wiesman, DrPH, MPH

Secretary

WSR 14-06-102

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed March 5, 2014, 8:58 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.-330(1).

Title of Rule and Other Identifying Information: WAC 246-282-990(5) Sanitary control of shellfish—Fees—Commercial geoduck paralytic shellfish poisoning testing.

Hearing Location(s): Department of Health, Town Center 3, Room 252, 243 Israel Road S.E., Tumwater, WA 98501, on April 15, 2014, at 9:00 a.m.

Date of Intended Adoption: April 22, 2014.

Submit Written Comments to: Brandy Brush, Department of Health, Office of Shellfish and Water Protection, P.O. Box 47824, Tumwater, WA 98501, <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2257, by April 15, 2014.

Assistance for Persons with Disabilities: Contact Brandy Brush by April 8, 2014, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to equitably assess the costs of commercial geoduck paralytic shellfish poison (PSP) testing. The cost assessment will follow the annual redistribution formula which is based on the number of tests done in the previous year. The testing is essential to public health as it is the only way to determine if dangerous levels of PSP exist in commercial geoduck and ensure toxic shellfish do not reach consumers.

Reasons Supporting Proposal: The proposed geoduck PSP fee redistribution is based on the 2013 total cost of service for the entities that submitted geoduck tests and the number of tests done for each entity.

Statutory Authority for Adoption: RCW 43.70.250.

Statute Being Implemented: RCW 43.70.250.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Brandy Brush, 243 Israel Road S.E., Tumwater, WA 98501, (360) 236-3342; Implementation and Enforcement: Rick

AMENDATORY SECTION (Amending WSR 13-11-038, filed 5/10/13, effective 6/10/13)

WAC 246-282-990 Fees. (1) The required annual shellfish operation license fees for shellstock shippers and shucker-packers due October 1, 2011, shall be reduced by twenty-five percent of the annual shellfish operation license fees in subsection (2) of this section. Beginning July 1, 2012, and for every subsequent year, the full annual shellfish operation license fees in subsection (2) of this section shall be assessed.

(2) Annual shellfish operation license fees are:

Type of Operation	Annual Fee
Harvester	\$263
Shellstock Shipper	
0 - 49 Acres	\$297
50 or greater Acres	\$476
Scallop Shellstock Shipper	\$297
Shucker-Packer	
Plants with floor space < 2000 sq. ft.	\$542
Plants with floor space 2000 sq. ft. to 5000 sq. ft.	\$656
Plants with floor space > 5000 sq. ft.	\$1,210

(3) The fee for each export certificate is \$20.00.

(4) Annual PSP testing fees for companies harvesting species other than geoduck intertidally (between the extremes of high and low tide) are as follows:

Fee Category	Number of Harvest Sites	Fee
Type of Operation		
Harvester	≤ 2	\$173
Harvester	3 or more	\$259
Shellstock Shipper	≤ 2	\$195
	0 - 49 acres	

Fee Category	Type of Operation	Number of Harvest Sites	Fee	Harvester	Fee
	Shellstock Shipper	3 or more	\$292	Suquamish Tribe	\$((11,135)) <u>14,178</u>
	0 - 49 acres			Swinomish Tribe	\$((332)) <u>820</u>
	Shellstock Shipper	N/A	\$468	Taylor Shellfish	\$((166)) <u>234</u>
	50 or greater acres			Tulalip Tribe	\$((9,639)) <u>7,382</u>
	Shucker-Packer	≤ 2	\$354		
	(plants < 2000 ft ²)				
	Shucker-Packer	3 or more	\$533		
	(plants < 2000 ft ²)				
	Shucker-Packer	≤ 2	\$429		
	(plants 2000 - 5000 ft ²)				
	Shucker-Packer	3 or more	\$644		
	(plants 2000 - 5000 ft ²)				
	Shucker-Packer	N/A	\$1,189		
	(plants > 5000 ft ²)				

(a) The number of harvest sites will be the total number of harvest sites on the licensed company's harvest site certificate:

- (i) At the time of first licensure; or
- (ii) January 1 of each year for companies licensed as harvesters; or
- (iii) July 1 of each year for companies licensed as shellstock shippers and shucker packers.

(b) Two or more contiguous parcels with a total acreage of one acre or less is considered one harvest site.

(5) Annual PSP testing fees for companies harvesting geoduck are as follows:

Harvester	Fee
Department of natural resources (quota tracts harvested by DNR contract holders)	\$((8,310)) <u>9,140</u>
Discovery Bay Shellfish	\$((166)) <u>2,226</u>
Jamestown S'Klallam Tribe	\$((3,158)) <u>2,226</u>
Lower Elwha Klallam Tribe	\$((2,994)) <u>3,515</u>
Lummi Nation	<u>\$703</u>
Nisqually Tribe	\$((5,318)) <u>2,461</u>
Port Gamble S'Klallam Tribe	\$((4,653)) <u>3,749</u>
Puyallup Tribe of Indians	\$((10,470)) <u>9,257</u>
((Skokomish Indian Tribe	<u>\$665))</u>
Squaxin Island Tribe	\$((997)) <u>2,109</u>

(6) PSP fees must be paid in full to department of health before a commercial shellfish license is issued or renewed.

(7) Refunds for PSP fees will be given only if the applicant withdraws a new or renewal license application prior to the effective date of the new or renewed license.

**WSR 14-06-104
PROPOSED RULES
DEPARTMENT OF LICENSING**

[Filed March 5, 2014, 9:12 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-20-011.

Title of Rule and Other Identifying Information: Chapter 196-29 WAC, Professional practices, amending WAC 196-29-110 Land surveying practice standards and new section WAC 196-29-105 Practice of land surveying.

Hearing Location(s): Davenport Hotel, Cutter Room, 10 South Post Street, Spokane, WA 99201, on April 10, 2014, at 6:00 p.m.; at the Radisson Hotel, Boardroom 2, 18118 International Boulevard, Seattle, WA 98188, on April 16, 2014, at 6:00 p.m.; at the Holiday Inn, Boardroom, 8606 36th Avenue N.E., Marysville, WA 98270, on April 22, 2014, at 6:00 p.m.; at the Red Lion, Birch Room, 510 South Kelso Drive, Kelso, WA 98626, on April 24, 2014, at 6:00 p.m.; and at the Hilton Garden Inn, Boardroom, 401 East Yakima Avenue, Yakima, WA 98901, on April 29, 2014, at 6:00 p.m.

Date of Intended Adoption: May 6, 2014.

Submit Written Comments to: George A. Twiss, PLS, Executive Director, Board of Registration for Professional Engineers and Land Surveyors, P.O. Box 9025, Olympia, WA 98507-9025, e-mail engineers@dol.wa.gov, fax (360) 664-2551, by April 8, 2014.

Assistance for Persons with Disabilities: Contact Cassandra Fewell, executive assistant, by April 8, 2014, TTY (360) 664-0116 or (360) 664-1564.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rules defining the scope of practice for land surveying are being proposed to help clarify terminology that has become unclear since the Engineer's Registration Act (RCW 18.43.020(9)) was first adopted in 1947.

Reasons Supporting Proposal: Clarification of the terminology is needed to bring contemporary definitions to the traditional terminology.

Statutory Authority for Adoption: RCW 18.43.035.

Statute Being Implemented: Chapter 18.43 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Board of registration for professional engineers and land surveyors, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: George Twiss, 405 Black Lake Boulevard, Olympia, WA 98502, (360) 664-1565.

No small business economic impact statement has been prepared under chapter 19.85 RCW. There is no fiscal impact to licensees.

A cost-benefit analysis is not required under RCW 34.05.328. There is no fiscal impact to licensees.

March 5, 2014
Damon Monroe
Rules Coordinator

NEW SECTION

WAC 196-29-105 Practice of land surveying. The practice of land surveying, as defined in RCW 18.43.020(9) includes the:

- (1) Evaluation and interpretation of evidence;
- (2) Adjustment and authoritative interpretation of survey data;
- (3) Certification of positional accuracy of maps or measured survey data;
- (4) Acquisition of field data required to authoritatively position the location of features;
- (5) Utilization of the principles of land surveying to determine the position of any monument or reference point which marks a property line, boundary, corner, right of way, easement or alignment of those lines, or setting, resetting, or replacing any such monument or reference point;
- (6) Setting, resetting, or replacing of control points which orient construction or engineering projects in relation to property, easement, or right of way boundaries;
- (7) Rendering of, either directly or indirectly, an authoritative reference or opinion as to the location of a property line, boundary, right of way, easement, or any corner position relating thereto;
- (8) Creation and modification of descriptions for use in legal instruments of conveyance of real property and property rights (easements) and the subdivision of land;
- (9) Creation of maps and georeferenced data bases representing authoritative locations for boundaries, the location of fixed works, or topography; and
- (10) Establishment of ground control which determines authoritative elevations or boundaries in relation to photogrammetric or other active or passive remote-based sensing technology.

As used throughout this section, the term authoritative or authoritatively means: Being presented as trustworthy and competent when used to describe products, processes, and applications or data resulting from the practice of land surveying.

Except for the authority granted to county engineers in chapters 36.75, 36.80, 36.81, and 36.86 RCW, and where otherwise exempted in state law, the practice of land survey-

ing must be performed by or under the direct supervision of a licensed professional surveyor.

AMENDATORY SECTION (Amending WSR 06-22-038, filed 10/25/06, effective 11/25/06)

WAC 196-29-110 Land surveying practice standards. Failure by any registrant to comply with the provisions of the Survey Recording Act, chapter 58.09 RCW and the survey standards, chapter 332-130 WAC shall be considered misconduct or malpractice as defined by RCW 18.43.-105(((111))) (10).

The following standards shall also apply:

(1) The monumentation, posting, and/or the marking of a boundary line between two existing corner monuments constitutes the "practice of land surveying" as defined in chapter 18.43 RCW and chapter 196-16 WAC, and consequently requires said work to be performed under the direct supervision of a registered professional land surveyor.

(2) The field survey work performed to accomplish the monumentation, posting, and marking of a boundary line between two existing corner monuments shall meet the minimum standards imposed by chapter 332-130 WAC.

(3) The monumentation, posting, and/or marking of a boundary line between two existing corner monuments involves a determination of the accuracy and validity of the existing monuments by the use of standard survey methods and professional judgment.

(4) The monumentation, posting, and marking of a boundary line between two existing corner monuments shall require the filing of a record of survey according to chapter 58.09 RCW unless both corners satisfy one or both of the following requirements:

(a) The corner(s) are shown as being established on a properly recorded or filed survey according to chapter 58.09 RCW and are accurately and correctly shown thereon.

(b) The corner(s) are described correctly, accurately, and properly on a land corner record according to chapter 58.09 RCW if their establishment was by a method not requiring the filing of a record of survey.

WSR 14-06-110 PROPOSED RULES DEPARTMENT OF FISH AND WILDLIFE

[Filed March 5, 2014, 11:18 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-02-114 on December 31, 2013.

Title of Rule and Other Identifying Information: WAC 220-49-005 Puget Sound forage fish—Definitions—General provisions, 220-49-011 Herring, anchovy and smelt fishing—Lawful gear—Drag seine, 220-49-012 Herring, anchovy and smelt fishing—Purse seine, 220-49-013 Herring, anchovy and smelt fishing—Dip bag net, 220-49-056 Smelt fishing—Seasons, 220-49-057 Smelt fishing—Weekly periods, 220-56-107 Fishing hours, and 220-56-270 Smelt—Areas and seasons.

Hearing Location(s): Natural Resources Building, Room 172, 1111 Washington Street S.E., Olympia, WA 98504, on April 11-12, 2014, at 8:30 a.m.

Date of Intended Adoption: On or after June 13, 2014.

Submit Written Comments to: Craig Burley, 600 Capitol Way North, Olympia, WA 98501, e-mail Craig.Burley@dfw.wa.gov, fax (360) 902-2943, by April 4, 2014.

Assistance for Persons with Disabilities: Contact Tami Lininger by April 2, 2014, TTY (360) 902-2207 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal addresses smelt harvest in Puget Sound and explores rule changes to reduce recreational and commercial smelt harvest. Three options are proposed: (1) No changes to the rules; (2) closure of the commercial fishery on Sundays and from 10:00 p.m. to 6:00 a.m. during open seasons, as well as closure of the recreational dip net fishery from 10:00 p.m. to 6:00 a.m.; and (3) complete closure of the commercial fishery and closure of the recreational dip net fishery from 10:00 p.m. to 6:00 a.m. Additionally, under both Options 2 and 3, inactive commercial purse seine and dip bag net fisheries in Puget Sound are permanently closed. Under Options 2 and 3, commercial smelt harvest is expected to decrease from forty - one hundred percent. Recreational harvest will decrease with the night closure, but the degree of this decrease cannot be predicted as the recreational fishery is not currently monitored. A creel survey at one location in 2012 suggests the night closure could reduce harvest by as much as eleven percent at one high-use site.

- **Option 1 - No change.** Under current state rules, commercial fishing for smelt in Puget Sound is open from 8 a.m. Sunday to 8 a.m. Friday during seasonal openings. Recreational smelt fishing is open year-round, except in Hood Canal where it is closed. The use of dip nets is allowed from 8 a.m. Friday to 8 a.m. Wednesday. Jig gear can be used seven days per week.

- **Option 2 - Reduce both commercial and recreational use.** Reduce both commercial and recreational use: Commercial smelt fishing would be closed Sundays and would be allowed only from 6 a.m. to 10 p.m. Monday through Thursday during seasonal openings in each area. Inactive commercial smelt fisheries, including dip bag and purse seine, which have not been in use for at least ten years, would be closed. Recreational smelt fishing would be closed overnight except for the use of jig gear, which could be used seven days per week. Dip nets would be allowed for recreational use from 6 a.m. to 10 p.m. Friday through Tuesday.

- **Option 3 - Close commercial fishing, reduce recreational use.** Close commercial fishing, reduce recreational use: All commercial fishing for smelt in Puget Sound would be closed. Recreational smelt fishing would be closed overnight except for the use of jig gear, which could be used seven days per week. Dip nets would be allowed for recreational use from 6 a.m. to 10 p.m. Friday through Tuesday.

Reasons Supporting Proposal: Reducing smelt harvest will leave more forage fish in the water for consumption by other species in marine and terrestrial ecosystems within and adjacent to Puget Sound. In lieu of detailed knowledge about the abundance and distribution of surf smelt, Options 2 and 3

represent a precautionary, conservative approach to management.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.04.055, and 77.12.047.

Statute Being Implemented: RCW 77.04.012, 77.04.013, 77.04.055, and 77.12.047.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: WDFW is also accepting comments on the proposed rule changes online. Members of the public may comment using the online form at <http://wdfw.wa.gov/fishing/regulations/smelt/>.

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Craig Burley, 1111 Washington Street S.E., Olympia, WA, (360) 902-2784; and Enforcement: Steven Crown, Chief, 1111 Washington Street S.E., Olympia, WA, (360) 902-2373.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

1. Description of the Reporting, Recordkeeping and Other Compliance Requirements of the Proposed Rules: The proposed rule changes will affect the commercial smelt fishing industry within Puget Sound. There are three distinct alternatives being proposed:

1. Status quo, which would not result in any changes to the fishery.
2. A reduction in fishery opportunity by closing the fishery on Sunday, and limiting harvest during all open days to hours between 6 a.m. and 10 p.m.
3. Closing commercial smelt fishing in Puget Sound entirely.

Throughout this statement, the alternatives will be referred to as Options 1, 2, and 3, respectively. The analysis is based on fishery performance from 2004-13, the most recent decade for which complete data are available.

2. Kinds of Professional Services That a Small Business is Likely to Need in Order to Comply with Such Requirements: No additional professional services would be needed by a small business to comply with the proposed fishery changes under any of the options.

3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor and Increased Administrative Costs: None of the options should result in additional costs to small businesses.

4. Will Compliance with the Rule Cause Businesses to Lose Sales or Revenue? Options 2 and 3 will result in lost profits for small businesses. Option 2 is projected to reduce fishery harvest by nearly forty percent, with an anticipated loss of forty percent of revenue. This may not be the case if the market price of smelt increases due to decreased supply, which would result in profit losses of less than forty percent.

Option 3 would result in complete loss of income for fishers and marketers who specialize in smelt and do not profit from the sale of any other species.

5. Cost of Compliance for the Ten Percent of Businesses That are the Largest Businesses Required to Comply with the Proposed Rules, Using One or More of the Following as a Basis for Comparing Costs:

- (a) Cost per employee;
- (b) Cost per hour of labor; or
- (c) Cost per \$100 of sales.

The agency selected option (c) to compute costs of compliance.

Option 1 would result in no costs to businesses.

Option 2 would cost \$40 per \$100 of sales, assuming that availability of marketable product decreases forty percent but all other costs, and the price per pound of fish, remain stable.

Option 3 would result in a complete loss of profits, or \$100 per \$100 of sales.

Now compare the largest businesses' cost of compliance with the cost of compliance for small businesses. Will this rule have a disproportionate impact on small businesses? No, all businesses involved in this fishery are small businesses.

6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses or Reasonable Justification for Not Doing So: The agency considered an array of rule change options ranging from partial to complete impacts on smelt fisheries. While decreased harvest for conservation purposes was the goal, consideration was given to perpetuation of the fishery.

7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule: The agency sent a letter to known participants of the affected fisheries on January 23, 2014. On January 30, 2014, WDFW held a meeting on the potential changes and invited all participants of the affected fisheries. A web page was created to solicit additional comments from participants, as well as members of the public. An additional open public meeting will be held on March 21, 2014, and an opportunity to provide written and oral comments on the proposed rule changes will occur at the April fish and wildlife commission meeting on April 11-12, 2014.

8. A List of Industries That Will Be Required to Comply with this Rule: All fishers participating in the Puget Sound commercial smelt fishery will be required to comply with changes to the rules.

9. An Estimate of the Number of Jobs That Will Be Created or Lost as the Result of Compliance with the Proposed Rule: Only Option 3 is anticipated to have an impact on jobs associated with this fishery. A complete closure of the fishery could result in as many as seven lost jobs. However, some fishers may turn to the exploitation of other species, resulting in no loss of jobs.

A copy of the statement may be obtained by contacting Dayv Lowry, 1111 Washington Street S.E., 6th Floor, Olympia, WA 98501, phone (360) 902-2558, fax (360) 902-2943, e-mail dayv.lowry@dfw.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. This proposed rule making does not involve hydraulics.

March 5, 2014
Joanna M. Eide
Rules Coordinator

OPTION 2

AMENDATORY SECTION (Amending WSR 98-05-043, filed 2/11/98, effective 3/14/98)

WAC 220-49-005 Puget Sound forage fish((—Definitions)) commercial fisheries—General provisions. (1) It is unlawful to fish for or possess Puget Sound forage fish taken for commercial purposes except at the times, during the seasons and using the gear provided for in this chapter.

(2) It is unlawful to fish for or possess candlefish taken for commercial purposes. A violation of this subsection is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

AMENDATORY SECTION (Amending WSR 98-05-043, filed 2/11/98, effective 3/14/98)

WAC 220-49-011 Puget Sound herring, anchovy and smelt ((fishing Lawful gear)) commercial fisheries

Drag seine. (1) ((Lawful)) Gear requirements: It is unlawful to operate drag seine gear in the Puget Sound herring, anchovy and smelt commercial fisheries ((shall not)) that exceeds 350 feet in length or contains meshes less than 1/2 inch stretch measure. A violation of this subsection is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

(2) Licensing:

(a) A food fish drag seine fishery license is ((a license)) required to operate ((the)) drag seine gear ((provided for in this section)) in the Puget Sound smelt and anchovy commercial fisheries and allows the operator to retain smelt and anchovy.

(b) A herring drag seine fishery license is ((a license)) required to operate ((the)) drag seine gear ((provided for in this section)) in the Puget Sound herring commercial fishery and allows the operator to retain herring.

(c) Failure to obtain the required license prior to operating gear and retaining smelt, anchovy or herring is punishable under RCW 77.15.500, Commercial fishing without a license—Penalty.

AMENDATORY SECTION (Amending WSR 98-05-043, filed 2/11/98, effective 3/14/98)

WAC 220-49-012 Puget Sound herring((,)) and anchovy ((and smelt fishing)) commercial fisheries—Purse seine. (1) ((Lawful)) Gear requirements:

(a) It is unlawful to harvest smelt using purse seine gear in Puget Sound.

(b) It is unlawful to operate purse seine gear in the Puget Sound herring and anchovy fisheries ((shall not)) that exceeds 600 feet in length or contains meshes less than 1/2-inch stretch measure, unless otherwise authorized by permit from the director.

(2) ((Lawful purse seine gear in the Puget Sound smelt fishery shall not exceed 350 feet in length nor contain meshes less than 1/2 inch stretch measure.)) A violation of subsection (1) of this section is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

(3) Licensing:

(a) A baitfish purse seine fishery license is ((a license)) required to operate ((the)) purse seine gear ((provided for in this section)) in the Puget Sound anchovy commercial fishery and allows the operator to retain ((smelt and)) anchovy.

(b) A herring purse seine fishery license is ((a license)) required to operate ((the)) purse seine gear ((provided for in this section)) in the Puget Sound herring fishery and allows the operator to retain herring.

(c) Failure to obtain the required license prior to operating purse seine gear and retaining anchovy or herring is punishable under RCW 77.15.500, Commercial fishing without a license—Penalty.

AMENDATORY SECTION (Amending WSR 02-08-026, filed 3/27/02, effective 4/27/02)

WAC 220-49-013 Puget Sound herring((s)) and anchovy ((and smelt fishing)) commercial fisheries—Dip bag net. (1) ((Lawful)) Gear requirements:

(a) It is unlawful to harvest smelt using dip bag net gear in Puget Sound.

(b) It is unlawful to operate dip bag net gear in the Puget Sound herring and anchovy fisheries ((shall not)) that exceeds 18 square feet. ((Lawful dip bag net gear in the Puget Sound smelt fishery shall not exceed 36 inches across the frame.))

(c) It is unlawful to operate a dip net from a vessel under power, and it is unlawful to operate more than one dip net at one time.

(2) A violation of subsection (1) of this section is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

(3) Licensing:

(a) ((A smelt)) An anchovy dip bag net fishery license is ((a license)) required to operate ((the)) dip bag net gear ((provided for in this section)) in the Puget Sound anchovy commercial fishery and allows the operator to retain ((smelt and)) anchovy.

(b) A herring dip bag net fishery license is ((a license)) required to operate ((the)) dip bag net gear ((provided for in this section)) in the Puget Sound herring commercial fishery and allows the operator to retain herring.

(c) Failure to obtain the required license prior to operating dip bag net gear and retaining anchovy or herring is punishable under RCW 77.15.500, Commercial fishing without a license—Penalty.

AMENDATORY SECTION (Amending WSR 04-17-098, filed 8/17/04, effective 9/17/04)

WAC 220-49-056 Puget Sound smelt ((fishing)) commercial fishery—Seasons. It ((shall be)) is unlawful to take, fish for or possess smelt for commercial purposes in Puget Sound except during the following seasons:

(1) Areas 20A and 21A((—)): Open July 1 ((to)) through April 15.

(2) Area 22B((—)): Open November 1 ((to)) through April 15.

(3) Areas 24A, 24B, 24C, and 24D((—)): Open July 1 ((to)) through April 15.

(4) Areas 25A and 25E((—)): Open November 1 ((to)) through April 15.

(5) Areas 26B, 26C, 26D, 28B, and 28C((—)): Open October 1 ((to)) through April 15, except:

(a) Those waters within 200 feet of the shore adjacent to department property at Ross Point in Area 26C are closed to commercial smelt harvest at all times((,)); and

(b) Those waters of Sinclair Inlet west of a line due south from the ferry dock in Bremerton are open only ((8:01)) from 6:01 a.m. Wednesday through ((7:59 a.m. Friday)) 9:59 p.m. Thursday of each week during the open period.

(6) Areas 27A, 27B and 27C((—)): Closed year-round.

(7) Areas 28A and 28D((—)): Open September 1 ((to)) through April 15.

(8) All other areas not specified in this section are open ((the entire year)) year-round.

(9) A violation of this section is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

AMENDATORY SECTION (Amending WSR 94-12-009, filed 5/19/94, effective 6/19/94)

WAC 220-49-057 Puget Sound smelt ((fishing)) commercial fishery—Weekly periods. It is unlawful to fish for smelt for commercial purposes in Puget Sound except from ((8:00 a.m. Sunday to 8:00 a.m. Friday and)) 6:00 a.m. to 10:00 p.m. each day Monday through Thursday during open seasons. It is unlawful to possess smelt taken for commercial purposes during ((such)) a closed ((period)) time. A violation of this section is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

OPTION 3

AMENDATORY SECTION (Amending WSR 98-05-043, filed 2/11/98, effective 3/14/98)

WAC 220-49-005 Puget Sound forage fish((—Definitions)) commercial fisheries—General provisions. (1) It is unlawful to fish for or possess Puget Sound forage fish taken for commercial purposes except at the times, during the seasons and using the gear provided for in this chapter.

(2) It is unlawful to fish for or possess candlefish taken for commercial purposes. A violation of this subsection is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

AMENDATORY SECTION (Amending WSR 98-05-043, filed 2/11/98, effective 3/14/98)

WAC 220-49-011 Herring((s)) and anchovy ((and smelt fishing—Lawful gear)) commercial fisheries—Drag seine. (1) ((Lawful)) Gear requirements: It is unlawful to operate drag seine gear in the Puget Sound herring((s)) and anchovy ((and smelt)) fisheries ((shall not)) that exceeds 350 feet in length or contains meshes less than 1/2 inch stretch measure. A violation of this subsection is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

(2) Licensing:

(a) A food fish drag seine fishery license is ((a license)) required to operate ((the)) drag seine gear ((provided for in this section)) in the Puget Sound anchovy commercial fishery and allows the operator to retain ((smelt and)) anchovy.

(b) A herring drag seine fishery license is ((a license)) required to operate ((the)) drag seine gear ((provided for in this section)) in the Puget Sound herring commercial fishery and allows the operator to retain herring.

(c) Failure to obtain the required license prior to operating drag seine gear and retaining anchovy or herring is punishable under RCW 77.15.500, Commercial fishing without a license—Penalty.

AMENDATORY SECTION (Amending WSR 98-05-043, filed 2/11/98, effective 3/14/98)

WAC 220-49-012 Puget Sound herring((,)) and anchovy ((and smelt fishing)) commercial fisheries—Purse seine.

(1) ((Lawful)) Gear requirements: It is unlawful to operate purse seine gear in the Puget Sound herring and anchovy commercial fisheries ((shall not)) that exceeds 600 feet in length or contains meshes less than 1/2-inch stretch measure, unless otherwise authorized by permit from the director. A violation of this subsection is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

(2) ((Lawful purse seine gear in the Puget Sound smelt fishery shall not exceed 350 feet in length nor contain meshes less than 1/2 inch stretch measure.

(3)) Licensing:

(a) A baitfish purse seine fishery license is ((a license)) required to operate ((the)) purse seine gear ((provided for in this section)) in the Puget Sound anchovy commercial fishery and allows the operator to retain ((smelt and)) anchovy.

(b) A herring purse seine fishery license is ((a license)) required to operate ((the)) purse seine gear ((provided for in this section)) in the Puget Sound herring commercial fishery and allows the operator to retain herring.

(c) Failure to obtain the required license prior to operating purse seine gear and retaining anchovy or herring is punishable under RCW 77.15.500, Commercial fishing without a license—Penalty.

AMENDATORY SECTION (Amending WSR 02-08-026, filed 3/27/02, effective 4/27/02)

WAC 220-49-013 Puget Sound herring((,)) and anchovy ((and smelt fishing)) commercial fisheries—Dip bag net.

(1) ((Lawful)) It is unlawful to operate dip bag net gear in the Puget Sound herring and anchovy commercial fisheries ((shall not)) that exceeds 18 square feet. ((Lawful dip bag net gear in the Puget Sound smelt fishery shall not exceed 36 inches across the frame.)) It is unlawful to operate a dip net from a vessel under power, and it is unlawful to operate more than one dip net at one time. A violation of this subsection is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

(2) Licensing:

(a) ((A smelt)) An anchovy dip bag net fishery license is ((a license)) required to operate ((the)) dip bag net gear ((pro-

vided for in this section)) in the Puget Sound anchovy commercial fishery and allows the operator to retain ((smelt and)) anchovy.

(b) A herring dip bag net fishery license is ((a license)) required to operate ((the)) dip bag net gear ((provided for in this section)) in the Puget Sound herring commercial fishery and allows the operator to retain herring.

(c) Failure to obtain the required license prior to operating dip bag net gear and retaining anchovy or herring is punishable under RCW 77.15.500, Commercial fishing without a license—Penalty.

AMENDATORY SECTION (Amending WSR 04-17-098, filed 8/17/04, effective 9/17/04)

WAC 220-49-056 Puget Sound smelt ((fishing—Seasons)) commercial fishery—Closed. It ((shall be)) is unlawful to take, fish for or possess smelt for commercial purposes in Puget Sound ((except during the following seasons:

(1) Areas 20A and 21A—July 1 to April 15.

(2) Area 22B—November 1 to April 15.

(3) Areas 24A, 24B, 24C, and 24D—July 1 to April 15.

(4) Areas 25A and 25E—November 1 to April 15.

(5) Areas 26B, 26C, 26D, 28B, and 28C—October 1 to April 15 except those waters within 200 feet of shore adjacent to department property at Ross Point in Area 26C are closed to commercial smelt harvest at all times, and those waters of Sinclair Inlet west of a line due south from the ferry dock in Bremerton are open only 8:01 a.m. Wednesday through 7:59 a.m. Friday of each week during the open period.

(6) Areas 27A, 27B and 27C—Closed year round.

(7) Areas 28A and 28D—September 1 to April 15.

(8) All other areas open the entire year)). A violation of this section is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-49-057 Smelt fishing—Weekly periods.

OPTIONS 2 & 3

AMENDATORY SECTION (Amending WSR 06-13-023, filed 6/13/06, effective 7/14/06)

WAC 220-56-107 Fishing hours. (1) It is ((lawful)) permissible to fish for food fish, game fish, and unclassified fish twenty-four hours per day during any open period for the species, except as otherwise provided. Unless otherwise provided, fishing seasons open at 12:01 a.m. on the first day and end at 11:59 p.m. on the last day of any season.

(2) It is unlawful to fish for the following species during the ((time periods indicated)) following times and within the following areas:

(a) It is unlawful to fish for salmon at night in the Hood-sport Hatchery zone as provided ((for)) in WAC 220-56-124.

(b) It is unlawful to fish for any species during night closures as provided ((for in WAC 220-56-126 and 232-28-619)) in department rule.

(c) It is unlawful to fish for sturgeon in freshwater, except the Chehalis River, during the night closure provided ((for)) in WAC 220-56-282 (6)(k).

(d) It is unlawful to fish for smelt in Puget Sound from 10:00 p.m. to 6:00 a.m. unless the person fishes for smelt using forage fish jig gear.

AMENDATORY SECTION (Amending WSR 11-16-103, filed 8/3/11, effective 9/3/11)

WAC 220-56-270 Smelt—Areas and seasons. (1) It is unlawful to fish for or possess Columbia River smelt or eulachon (*Thaleichthys pacificus*).

(2) Fishing for smelt other than Columbia River smelt or eulachon (*Thaleichthys pacificus*) is ((permitted the entire year)) permissible year-round on Pacific Ocean beaches and in all rivers concurrent with a salmon or gamefish opening, except ((closed)) it is unlawful to fish for smelt in the Columbia River and its tributaries.

(3) Fishing for smelt other than Columbia River smelt or eulachon (*Thaleichthys pacificus*) is open in Puget Sound and the Strait of Juan de Fuca ((the entire year)) year-round except:

(a) Closed weekly from ((8:00 a.m. Wednesday to 8:00)) 10:00 p.m. Tuesday to 6:00 a.m. Friday for all ((types of)) gear types except forage fish ((jigger)) jig gear; and

(b) Closed year-round in Catch Record Card Area 12 for all gear types.

(c) Violation of this subsection is an infraction, punishable under RCW 77.15.160.

(4) It is unlawful to possess smelt taken with gear in violation of the provisions of this section. Possession of smelt while using gear in violation of the provisions of this section is a rebuttable presumption that the smelt were taken with such gear. Possession of such smelt is punishable under RCW 77.15.380. Unlawful recreational fishing in the second degree—Penalty, unless the smelt are taken in ((the)) an amount((s)) or manner to constitute a violation of RCW 77.15.370. Unlawful recreational fishing in the first degree—Penalty.